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ABSTRACT

This book explores the lives of people who have shaped the laws and legal system of the United States and describes their impact on the U.S. Constitution. The new government's beginnings are examined in unit 1, through the pitfalls and triumphs of the First Continental Congress. The role of John Marshall, the First Chief Justice of the Supreme Court, who defined the nature of America's judicial branch of government, is outlined. The next unit follows Dorothea Dix in her struggle to reform America's prison system. Unit 4 discusses Dred Scott, whose landmark case helped define some of the issues underlying the Civil War. Unit 5 investigates famous lawmen and outlaws in the old West. Discussion of the Pinkertons and the James Gang, the Earps, and the Clantons reveals insights about law enforcement that spans both the 19th and 20th centuries. Unit 6 explores contrasting styles of executive leadership including Comanche Chief Quanah Parker, President Theodore Roosevelt, and Governor John Altgeld. Unit 7 describes the role of legal advocates through the lives of defense lawyer Clarence Darrow and prosecutor Thomas Dewey. Finally, unit 8 examines the civil rights movement. Each unit includes photos, discussion questions and follow-up activities. (RSL)

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200 YEARS OF CONSTITUTIONAL DEMOCRACY

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Law and U.S. History

AMERICAN ALBUM: 200 YEARS OF CONSTITUTIONAL DEMOCRACY

The Continental Congress voting independence. *National Portrait Gallery, Smithsonian Institution, Washington, D.C.*

Developed and written by
Coral Suter and Marshall Croddy

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Unit 1: The First Congress and the Constitution

New Beginnings

In March, 1789 America held its breath. Fresh from ratifying the new Constitution, the country waited and watched to see if the second experiment in national government would succeed. Hopes ran high, only to be muted when the First Congress failed to begin on schedule. Too few members had arrived in New York City to conduct business.

People who noted these events must have felt a sense of déjà vu. The Congress set up under the old Articles of Confederation also had trouble getting its members to attend sessions. Representatives arrived late, left early or failed to show up at all. This lack of interest reflected much of what was wrong with the Confederation.

Under the Articles, the central government was very weak; the power belonged to the states. Why should a representative attend Congress when the important decisions were made back in his home state? The Confederation Congress had trouble raising money, regulating commerce among the states and providing a united front against foreign countries. Ambassadors from the Confederation complained that when serving in London and Paris, other diplomats treated them with contempt. To these experienced European power brokers, the United States were more like the Squabbling States of America.

It was to solve these problems that the Constitution had been written. If it failed, how many more chances would the United States have? Congress's inability to achieve a quorum didn't help. As Fisher Ames, a representative from Massachusetts, wrote at the time, "We lose credit, spirit, everything. The public will forget the government before it is born."

Looking back on that spring long ago, we know Fisher Ames was wrong. The public did not forget. For nearly 200 years we have lived and prospered with the government ordained by the Constitution. Through times of crisis and war, social upheaval and economic despair, it has endured as the supreme law of the land.

Oliver Wendell Holmes, a Justice of the Supreme Court, once observed that ours is a nation of laws, not men. By this he meant no one is above the law. Yet, our constitutional system of law and government depends on people. Legislators, judges, presidents, police, lawyers, plaintiffs and defendants — all have made the Constitution work.

This book is about these people, how they have shaped our laws and legal system and how the Constitution influenced their lives and destinies. Starting with the able and practical men who gathered in New York City 20 decades ago, we examine our new government's beginnings through the pitfalls and triumphs of the First Congress. Next you will meet John Marshall, the Chief Justice of the Supreme Court who, perhaps more than anyone else, defined the nature of America's judicial branch of government. Then you will visit Dorothea Dix, the feisty reformer of America's prison system, and Dred Scott, the slave whose travels through the courts led to a landmark case which helped define the issues underlying the tragic Civil War.

James Madison, principal author of the Constitution. *Library of Congress.*

Famous lawmen and outlaws in the old West — the Pinkertons and the James Gang, the Earps and the Clantons — give insights about law enforcement yesterday and today. Contrasting styles of executive leadership are explored in a unit featuring Comanche Chief Quanah Parker, President Teddy Roosevelt and Governor John Altgeld. You will learn about the role of legal advocates through the eyes of defense lawyer Clarence Darrow and the gangbusting prosecutor Thomas Dewey. Finally, in examining the civil rights movement, you will see how social action supported by the Supreme Court gave new meaning to the concepts of freedom contained in the Constitution.

Like photos in a family album, the portraits of the people in this book peer out of their time into ours. Each person has made a contribution to the legal history of our constitutional democracy. Each offers us insights on issues of today and tomorrow.

1. Why was the Constitution written?
2. When written, the Constitution was divided into a Preamble and seven Articles. What is the purpose of each part?
3. What, if any, value is there in learning about people who lived 200 years ago? 50 years ago? Is this study more or less important than learning about what is going on today?

5

A Congress of Firsts

By April 6, 1789, the weeks of waiting were finally over. Richard Henry Lee of Virginia had arrived in New York City. The twelfth senator to take a seat, his presence gave the Senate enough members to conduct business. The House of Representatives had achieved a quorum on April 1. Now the First Congress of the United States of America could begin work.

Forty-two Senators and House members were present, representing eleven states. (North Carolina and Rhode Island had still not ratified the Constitution.) These men *were* the government of the United States. Except for a small bureaucracy created under the Confederation Congress, the two-house legislative branch was all that yet existed of the design for government contained in the newly adopted Constitution. Awesome tasks awaited them.

Before the executive branch could begin work, Congress would have to arrange to count the ballots of the first electoral college and inaugurate the President and Vice President. To get the judicial branch going, Congress had to set up a system of federal courts and outline their functions. Just as important was the question of money.

The inability to raise revenue had almost wrecked the government under the Articles of Confederation. The young nation owed massive amounts to foreign creditors, state governments and individuals who had loaned money during and after the Revolution. Building a new and strong central government would require more money to "provide for the common defense and general welfare of the United States."

Solving these problems was only the tip of the iceberg. Article I of the Constitution challenged Congress to erect the whole machinery of government. The two houses would have to create a postal system, regulate commerce among the states and fix standards of weights and measures. They would have to write and pass laws on raising armies, admitting new states and establishing a permanent national capital. Brilliant in its simplicity, Article I contained 18 specific powers. Yet, Article I did not tell Congress how to exercise its new powers.

Before anything could be done, rules and procedures for conducting business had to be agreed upon. By April 7, 1789 the rules committee of the House made its report. Based on the methods used in the English Parliament and in state governments, the proposed rules were accepted. Among the procedures were methods for passing a bill and the beginnings of the modern committee system. A committee would propose a bill which would then receive three readings before the House. But no bill could be read twice on the same day without special arrangements. After the second reading, the bill would go back to committee for revisions or be debated and amended by the whole House. This process would continue until the bill was passed.

The rules also made provisions for Committees of the Whole. Using this method, bills were read *twice*. After each reading, the clauses were debated and amendments were made by the whole House. This method gave everyone a chance to speak on important matters, but the process could be slow and tedious. Senator Fisher Ames, whose chamber adopted similar rules, complained: "A great clumsy machine is applied to the slightest and most delicate operations. . . . Certainly a bad method of doing business."

In spite of much squabbling, the representatives to the First Congress were up to the task. Many had long experience in both national and state politics. Eleven Senators and nine representatives had helped design the Constitution. Eighteen of the 26 Senate members and 36 of the 65 members of the House had served in the Continental Congress or in the Confederation Congress. Four had signed the Declaration of Independence. One, House member Roger Sherman of Connecticut, had signed every major national document since 1774! Without this wealth of experience, things might have turned out very differently.

Although there were as yet no political parties in the United States, the men of the First Congress represented a diverse number of interests. Each owed allegiance to a particular state. Trade and business interests often clashed with those of planters and farmers. Regions and sections of the sprawling nation of almost 4 million (including black slaves, but not native Americans) pressed for advantages in the laws being written.

Most of all, there were the concerns of those who feared the runaway power of a strong central government. Called Anti-federalists, most were willing to give the new Constitution and its government a "good try," but many were zealous in guarding the powers reserved for the states.

Senator William Maclay from Pennsylvania represented this point of view. Six foot three, and troubled by gout in both knees, Maclay wrote in his *Journal* that the Constitution might turn out to be "the vilest of all traps that was ever set to ensnare the freedom of an unsuspecting people." This viewpoint made him a defender of simple democratic values and a savage critic of many of his fellow Senators, especially Federalists.

Early in the first session of the First Congress, an issue came to the floor that set Maclay's teeth on edge. What titles and ceremonies should be adopted in government affairs? Prompted by Vice President John Adams, who thought such matters very important, many suggestions were made.

- When the President visited the Senate he should have a throne-like seat with a canopy.
- A speech made by the President should be referred to as "his most gracious speech."
- The President's formal title should be "His Highness the President of the United States of America and Protector of the Rights of the Same."

Hours and days were spent debating these formalities. Jokes began to circulate. Members called one another "Your Highness of the Senate" or "His Highness of the Lower House." One member referred to John Adams, who was short and stout, as "His Rotundity." Maclay, strongly opposed to any pretense of monarchy, hated the whole business. "We come here the servants, not the lords of our constituents," he wrote. In his view such matters should be left to the "dancing masters."

Chamber of the House of Representatives, in Federal Hall, New York City, 1789. *Library of Congress.*

Although few of the titles or ceremonies were adopted, the debate reflected more serious issues in the First Congress. Those who favored formality wanted to make sure that the new government, unlike the one under the Articles of Confederation, had dignity and the respect of the people. Those opposed were afraid that titles and ceremonies would make the new government too much like that of Great Britain with its king and royal ministers. The debate also showed the difficulty of operating when almost every procedure was a first.

The representatives themselves were very aware of this factor. James Madison, a member of the House and writer of the Constitution, reported, "In every step the difficulties from novelty are severely experienced. . . . Scarcely a day passes without some striking evidence of the delays . . . springing merely from the want of precedents." Under these circumstances, it is a wonder they accomplished so much.

After three sessions of the First Congress (the first two held in New York, the third in Philadelphia), the Representatives had:

- Established rules for conducting business, including the beginnings of the committee system.
- Passed the Judiciary Act which contained the basis for our Supreme Court and federal court system.
- Drafted and approved the Bill of Rights.
- Agreed that there should be at least three departments of the executive branch: Foreign Affairs, War and Finance. Later these would become the departments of State, Defense and the Treasury. They also approved the posts of Postmaster and Attorney General.
- Adopted a funding bill which included a plan for paying off the nation's debts.
- Decided that the nation's capital would be on the Potomac River (now Washington, D.C.).
- Passed the nation's first revenue law (a tax on drinking alcohol) and set up districts for collecting future taxes.
- Set up a system of tariffs and duties on foreign imports.

The list goes on. Congress also authorized the U.S. Census, defined and set penalties for federal crimes and erected a government for western lands beyond the Ohio River. It set up a patent office, wrote the first law protecting copyrights and bought land that later would become the military academy at West Point. Between April, 1789 and early March, 1791, the Congress met 519 times. It drafted almost 300 bills and passed 118. It established precedents and planted institutions that affect our laws even today. The First Congress truly was a Congress of firsts.

1. What factors hindered the work of the First Congress? What factors helped the representatives accomplish as much as they did?
2. What are the advantages of the Committee of the Whole system? Why might legislators favor its use?
3. Do you agree with William Maclay's position on the issue of titles and ceremony? Why or why not?
4. In your opinion what was the most important accomplishment of the First Congress? Why?

Select Committees

Imagine that you are representatives to the First Congress of the United States. It is 1789 and you have gathered in New York City to give specific meaning to the words contained in the new Constitution of the United States. Your classroom is Federal Hall where the Senate and House of Representatives are meeting. Outside and throughout the country, the people you represent are waiting to see if the experiment begun in Philadelphia during the Constitutional Convention will succeed or fail.

Each of the following problems was actually considered during the First Congress. Working in a committee, it will be your job to make your own decisions on the issues presented and report to the Committee of the Whole. Refer back to the text on the First Congress for ideas.

Committee 1: Advice and Consent. Article II gives the President the power to make treaties with foreign nations and Indian tribes with the "advice and consent" of a two-thirds vote of the Senate. Shortly, George Washington will attend a session with his Secretary of War to get approval of a treaty with powerful Indian nations of the South.

Your committee's problem: How should the Senate give its "advice and consent"? Should the Senate debate the treaty while the President is present? Should the vote be secret or should Senators be individually polled?

Committee 2: The Bill of Rights. Under the leadership of James Madison the drafting and approval of a bill of rights for the Constitution was a major issue during the First Congress. Several states had made their ratification of the Constitution dependent on such a document. Though some representatives argued that a bill of rights was unnecessary and listing limitations on government's power redundant, Madison finally carried the day.

Your committee's problem: Now that Congress has agreed to pass a bill of rights, what form should it take? Should it be made an Article of the existing Constitution or be added as an amendment? Should the language used in the Bill of Rights be "ought not" or "shall not"? For example, should the first amendment read "Congress shall make no law" or "Congress ought not make any law"?

Committee 3: Removal of Officers. Article II gives the President the power to appoint "Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court and all other officers of the United States" with the advice and consent of the Senate.

Your committee's problem: Can the President *remove* appointed officers without the "advice and consent" of the Senate?

Committee 4: Duties on Imports. Article I gives Congress the power to "lay and collect taxes, duties, imposts" with which to pay the nation's debts. Duties and imposts are fees charged on foreign goods entering the United States. The government was much in need of revenue to pay its debts and meet its Constitutional objectives. Yet much debate took place in Congress in passing the first Tariff Bill covering duties and imposts.

Your committee's problem: Should the United States tax foreign goods coming into the United States to raise revenue? Should the United States go further and tax foreign goods to give American industries and products a competitive market advantage? Should foreign goods carried in U.S. ships be taxed at a lower rate?

Committee 5: Representative Government. Article I, Section 1 holds that all legislative powers shall be vested in a Congress of the United States. The article does not clearly define the relationship between the representative and the people he or she represents.

Your committee's problem: Is an elected representative free to make a decision on a matter before Congress or must he vote according to the expressed will of the people or state he represents?

Committee 6: Coining of Money. Not all matters contained in the Constitution were fixed by the First Congress. The issue over the Article II power to coin money was left to the Second Congress. This led to a difficult argument. The Senate approved a half dollar that bore the likeness of George Washington. The House objected, claiming it was too much like the coins in England which used the reigning monarch's likeness.

Your committee's problem: Should a living President appear on a coin? If not, what should U.S. coins look like?

Step 1. After joining your committee, select a chairperson to lead your discussions and report your recommendations to the Committee of the Whole.

Step 2. As a group, carefully review your assigned problem and discuss *each question* raised in it. What should you do? Consider the short and long-term consequences of at least two options. When you have reached a decision, discuss:

a. What are the benefits of your solution? What are its costs?
b. Why is this the best solution to the problem?

Step 3. As a group, help the chairperson prepare a brief presentation. In it, describe the problem you addressed, propose your committee's solution and explain the reasons for your choice. Be prepared to answer questions from the other representatives.

Step 4. When your committee is called, the chairperson should stand and deliver a brief report. The teacher will then call for questions from the floor. A vote will be taken of the Committee of the Whole on whether to accept your committee's report or return it for further deliberations.

Follow Through: Today, sessions and committee meetings of the U.S. Senate and House of Representatives are broadcast nationally. A local radio or T.V. station might carry state assembly or city council meetings. (Often you can attend the latter in person.) Observe legislators at work for at least one hour and carefully note their activities and statements. Then, using fictitious lawmakers if you prefer, write a 10-minute script about what happened in the session. Arrange a performance of your script for the class.

Unit 2: John Marshall and the U.S. Courts

John Adams. *Collection of the Architect of the Capitol, Library of Congress.*

John Marshall. *National Portrait Gallery, Smithsonian Institution, Washington, D.C., transfer from the National Gallery of Art, Gift of Andrew Mellon.*

A Rock and a Hard Place

"Who shall I nominate now?" President John Adams turned thoughtfully to his Secretary of State. Adams was trying to find a new Chief Justice of the United States. The man he counted on to take the post had, alas, declined the honor.

The President's question stymied Secretary John Marshall, a lanky, somewhat awkward ex-Congressman from Virginia. He himself had been on the job only six months. Though a popular lawyer — a legal genius, some said — he had no idea who should fill the nation's highest judicial post. Maybe the President should consider someone already on the Supreme Court. What about Associate Justice Patterson?

"I shall not nominate him," said the President decidedly. He paused a moment, then looked at Marshall. "I believe I must nominate you."*

Abrupt as it may seem, Adams' choice was sound. He needed a Chief Justice who shared his firm Federalist views and would fight for a strong central government. Marshall was such a jurist. And Adams had to act quickly: he was about to lose his job.

A few months before, in the fall of 1800, voters had rejected the Federalist vision of rule by "the rich, the good and the wise." Thomas Jefferson's Republican Party, which favored rule by "the people," won control of Congress and the presidency. On March 4, 1801, Adams would hand his young nation over to a group which Federalists feared would destroy it. When John Marshall became Chief Justice in early February, Adams knew he had at least slowed the Republicans down.

Marshall was not Adams' only last-minute jurist. At 9:00 p.m. on March 3, three hours before the Republicans took office, Adams appointed 42 new justices of the peace and rushed their papers to the Senate. Under Federalist control until midnight, it had stayed in session just to confirm these appointments. John Marshall, in his role as Secretary of State, signed the documents. But before the commissions were delivered, the clock ran out.

Thomas Jefferson, the new president, did not want more Federalist officials. In any case, he doubted that Adams' last acts were legally binding. He told his Secretary of State, James Madison, to withhold 17 of the undelivered commissions. With no official papers, the 17 Federalists would not get their appointments.

There the matter would have ended, except that four of the men awaiting appointments seemed to want theirs badly. In 1789, Congress had passed a law, the Judiciary Act, giving the Supreme Court power to issue *writs of mandamus*. These legal orders, which get their name from the Latin for "we command," allow courts to tell government officials to take particular actions. The four job-seekers, one of them named William Marbury, asked the Supreme Court for a *writ of mandamus* ordering Secretary of State Madison to deliver the 17 commissions left over from Adams' term.

Marbury's request put Chief Justice Marshall in a difficult spot. If the Supreme Court ordered Madison to deliver Marbury's papers, the Secretary would surely refuse to obey. Jefferson and the Republican Congress would back him. With no way to enforce its order, Marshall's Court could

*Scene and quoted conversation from *An Autobiographical Sketch by John Marshall*, 1827.

do little about Madison's disobedience. The Court's power, and with it Federalist influence in the coming years, would be endangered.

Of course, Marshall could turn Marbury down. But refusing the writ would cast doubt on the legality of Adams' last-minute actions. People would accuse the Court of ignoring the law or, worse, evading it to appease the Republicans. Whatever the Court did, it was bound to lose prestige.

But John Marshall found a way out. His solution is still a high point in American legal reasoning. First, he said, Marbury's appointment was perfectly aboveboard and he should get his papers. If Madison wouldn't deliver them, Marbury had every right to demand a *writ of mandamus*.

However — and here's the twist — the Supreme Court couldn't give Marbury his writ because it had no constitutional authority to do so. Indeed, Congress had no constitutional authority to grant the Supreme Court power to issue such writs. In short, Marshall ruled that the Court must give up the power of issuing *writs of mandamus* because part of the Judiciary Act of 1789 was unconstitutional.

Jefferson despised the ruling because it affirmed Marbury's claims and Adams' actions. But there was nothing the President could do. Since he had not received an order, he could not embarrass the Court by refusing to obey. Moreover, in giving up the small power of issuing *writs of mandamus*, the Court established a great power: judicial review. Judicial review allows the courts to examine laws and executive acts and, if they violate the Constitution, overrule them.

Marshall's clever decision gave the Court a power not explicitly granted it in the Constitution. In doing this, Marshall followed the lead of Federalist framers like Alexander Hamilton who expected the courts to protect private rights from Congress. Marshall's ruling set a precedent that state and federal judges have followed ever since. Judicial review is now key to our government's system of checks and balances.

Still, the Court did not declare another act of Congress unconstitutional until the Dred Scott case, 54 years later. Oddly enough, one man controlled the Court for much of the intervening half century. That man was John Marshall. And *Marbury v. Madison* was but the first of dozens of his controversial and critical opinions.

1. Why did Marbury want a *writ of mandamus*?
2. Republicans accused Federalists of hiding in the judicial branch when they could no longer win elections. What information, if any, supports this view?
3. Was Marshall's *Marbury v. Madison* decision fair? How would you have decided the case?
4. As Adams' Secretary of State, Marshall took part in the events which led to *Marbury v. Madison*. Should he have excused himself from the case? If a judge played a similar role today, would his or her decision be suspect?
5. What is judicial review? If the courts lacked this power, what might happen when Congress or the president violates the Constitution?
6. Who should have the final say about what the Constitution means: the courts? the president? Congress? Explain your answer.

Follow Through: When Marshall took office, there were six High Court justices, one Chief and five Associates. Today there are nine. When did the number increase and why? In an oral report on this subject, give examples of "court packing" and discuss whether you think this practice is a legitimate use of presidential power.

The Court's Power

Step 1. Exactly what powers did the framers give the Supreme Court? Read Article III of the U.S. Constitution. Then, using the information in the first paragraph of Article III, Section 2, list the different kinds of cases the federal courts are allowed to resolve.

Step 2. The second paragraph of Section 2 explains which cases must be started (must "originate") in the Supreme Court itself and which reach the Supreme Court only on appeal from lower courts. On your list, place an "O" next to the cases over which the Supreme Court has original jurisdiction. Place an "A" next to those over which the Court has appellate jurisdiction.

Step 3. Which of the five cases described below can be tried in federal courts? Does the Supreme Court have original jurisdiction over any of them?

a. The owner of a fast food stand in Denver signed a one-year contract with a frozen french fry supplier in Idaho. Six months later, claiming the food arrived late and was sometimes spoiled, she refused to accept or pay for further shipments. Her supplier says she owes him $12,000 and takes her to court for breaking the contract.

b. A man owed his ex-wife $1,800 in child support payments. When he won $1,000 in his state's lottery, the government withheld the money to pay his debt. He feels this is not fair and sues to get the money back.

c. A foreign dictator used his country's public money to buy Florida real estate. When he fell from power, the new government claimed he acted illegally. It now wants the state of Florida to give it title to the property and sues Florida to accomplish this goal.

d. Members of a church in Texas are charged with breaking immigration laws by harboring illegal aliens. They claim the aliens are political refugees whom the federal government will not acknowledge because it supports tyrannical regimes in their homelands.

For Discussion

1. Which cases raise issues you think should be settled by the courts? Which raise issues that lawmakers should resolve? Explain your answers.
2. Do you think people should be able to appeal Supreme Court decisions to Congress, where they could be decided by majority vote? Would the Constitution allow such a procedure?

Marshall stops at a Virginia tavern while traveling the circuit. *Library of Congress.*

3. What does the third paragraph of Article III, Section 2 guarantee? Why might the framers have thought this so important? What kinds of trials might they have wanted to prevent?

Follow Through: Research and design a poster which shows all the parts of the federal judiciary. Identify the number of courts and judges or justices assigned to each. Include a brief description of what cases originate and what cases can be appealed to each type and level of the federal courts.

On the Bench

Today, Supreme Court justices hear cases in Washington, D.C. In John Marshall's time, they also held trials on the circuit. Every year, when the Court's nine-week session in the capital ended, each justice took to the road to try whatever federal cases had arisen in his assigned part of the country. Though one of his colleagues traveled 3,300 miles a year, Marshall's circuit through Virginia was only 900 miles.

On the road, Marshall usually drove his own one-horse gig, stopping the night in taverns. He spent his days hearing cases, monitoring courtroom procedures and ruling on legal questions like any trial judge. Evening might find him playing quoits (a ring toss game) or swapping tales with the locals.

Always a careless dresser, the Chief Justice found that traveling wreaked havoc on his wardrobe. On one circuit, his waistcoat pockets had so many holes that fifteen silver dollars "sought their liberty in the sands." Then, his breeches disappeared. "I have the extreme mortification," he wrote his wife, "to pass the whole time without that important article of dress."

Marshall's most famous circuit case came in 1807 when he presided over Aaron Burr's trial for treason. Burr had been arrested for plotting a rebellion in the west. The prosecution said he wanted to form an empire and conquer Mexico with British help. They charged him with assembling a force of 60 armed men to levy war against the U.S.

President Thomas Jefferson told Congress that Burr was "guilty beyond question." The public agreed. So many people crammed the courtroom that Marshall had to move the trial to a larger chamber. During the hearing, he gave both sides every chance to present evidence, overruling objections so that charges and counter-charges could be fully aired. His actions in court seemed to favor the prosecution. In private, he expressed doubt that the jury could acquit Burr, "however innocent they might think him," because of public feeling.

After the closing arguments, Marshall surprised many viewers by telling the jury that the prosecution had not legally proved its case. The Constitution required two witnesses to an overt act as proof of treason. Since Aaron Burr was not present when the 60 rebels met, their assembly was not an

overt act of treason on his part. Most of the prosecution's evidence was not relevant and the jury should ignore it. "The jury have now heard the opinion of the court on the law of the case," he concluded. "They will apply that law to the facts . . . as their own consciences may direct." Given these instructions, the jury had little choice but to find the prisoner "not proved guilty" and free him.

The process for hearing appellate cases is different from that used in trials. When the Supreme Court agrees to review a case, lawyers for both sides (and sometimes from other interested parties) prepare written arguments, called briefs, which the justices read and review.

Next, the justices hear oral arguments. Today the Court has its own building, but it used to hear cases in the Capitol's basement. (In 1814, after the British burned that building, the Court met for a short time in its clerk's home.) Though only certain lawyers could argue before the Court, they could talk as long as they wanted. "The acme of judicial distinction," Marshall once said, "is the ability to look a lawyer straight in the eyes for two hours and not hear a damned word he says." Time limits have since been imposed.

After hearing and questioning the lawyers, justices discuss their opinions. In Marshall's day, this process could be quite informal. None of the justices had homes in the Washington area. During the Court's sessions, they lived in boarding houses, sometimes two or more to a room, with common meals, candles, firewood and liquor included in the $15-a-week rent. Personable and persuasive, Marshall made good use of these close quarters.

In the Court's first years, each justice wrote his own opinion about each case. Marshall began the practice of issuing a majority opinion. Today, the Chief Justice (if he agrees with the majority) writes this opinion or assigns it to a like-minded colleague. Justices who agree can either join in the majority opinion or write a separate concurring opinion. Those who disagree write their own opinions or join in a dissent. As drafts of the opinions circulate for review, justices may modify or even reverse their views. Finally, the decisions are announced.

The logic of Marshall's High Court opinions impressed even his critics. He could cut straight to the heart of a case. "So perfect is his analysis," said one observer, "that he extracts the whole matter, the kernel of the inquiry, unbroken, undivided, clean and entire." But the warmest praise of Marshall came from his close friend and colleague, Joseph Story. "I love his laugh," wrote the Associate Justice. "It is too hearty for an intriguer. And his good temper and unwearied patience are equally agreeable on the bench and in the study."

1. Treason is the only crime defined in the Constitution. Where is it defined in that document? Do you agree with the framers' definition? Why is it so specific?

2. Compare the appellate process, described above, with the way Congress makes decisions. Which is more fair? More representative? More efficient? Which do you prefer? Why?

Follow Through: Most Americans believed Burr was guilty. One handbill called the trial's outcome "AWFUL!" and announced a hanging in effigy of Marshall as well as Burr. Investigate Burr's conspiracy. Does the evidence suggest he betrayed his country? Was he guilty of treason under the Constitution? Based on your research, present a mock trial with your classmates acting as jurors.

Who's To Judge?

Step 1. Divide the chalkboard or a sheet of paper into four columns.

a. Review the information about what judges do. In Column 1, list all the tasks and activities of a judge.

b. Consider each task. What knowledge or skill would someone need to do this well? List your answers in Column 2.

c. What education, training or experience would teach someone the skills and knowledge you identified? List these items in Column 3.

d. In Column 4, list the personal qualities or character traits a judge would need to do his or her job.

"I was . . . floored," joked Marshall after falling from a law library stepladder. *Perley's Reminiscences, Library of Congress.*

Step 2. Article II of the Constitution gives the president power to appoint federal judges. Imagine a newly elected president is hiring a staff to help review and recommend new judges. You want the job. To apply, you must submit a one-page letter explaining what you would look for in a judicial candidate. Review the chart from Step 1 and choose the three items which are most important. Be specific: exactly what skill or which experiences would you demand? Explain your choices in a letter to the president.

For Discussion

1. What skills, personal traits and experience might have prepared John Marshall for the bench? Were any of these mentioned in your letter?
2. Most judges were first lawyers. Should only those who have studied and practiced the law be allowed on the bench? Why or why not?
3. Imagine you were party to a lawsuit or accused of a crime. Would your standards for a good judge be different from those you described to the president? If so, how?

Follow Through: How are judges, justices and court commissioners selected in your community? Find out what standards they must meet and who reviews their applications. Which are elected and which appointed? What terms do they serve? How much are they paid? As part of an oral report on your findings, discuss whether standards for the bench are strict enough.

Without Favor

Judges have always been chosen for their political and personal views as well as their experience and skill. In one way, this makes sense: we all want the law interpreted by those who share our vision of it. Yet, at the same time, we expect judges to be fair, to keep their biases out of the courtroom. Consider these cases:

- A judge is deciding whether stockholders can force a company to stop doing business with South Africa. Though the judge has no investment in this company, she owns stock in several firms which make a good profit on South African transactions.
- A judge spent several years as a Civil Rights worker in the South. He is now hearing a case in which the federal government is trying to restrict the application of laws passed in the 1960s to assure equal voting rights for blacks.
- A woman is assaulted in a shopping mall parking lot and almost raped. She is a criminal court judge. Six months later, she is assigned a case where the accused allegedly raped a woman on a date.

1. In each case, should the judge withdraw? Why or why not? What standards should a judge use when making such decisions?
2. Once federal judges are appointed, the Constitution says they can only be impeached for treason, bribery or high crimes and misdemeanors. In 1804, Congress impeached two federal judges:
   - An alcoholic U.S. District Court Judge, insane for the last three years, who cursed and raved from the bench.
   - An Associate Justice of the Supreme Court who, while on circuit, berated those who disagreed with his political views and told a grand jury that electing Republicans would destroy the Union.

   Do you think Congress should have convicted either of these judges? Why or why not?
3. For what reasons, if any, should judges be permanently removed from the bench?

Follow Through: Examine a recent campaign to elect (or recall) a judge or justice. Collect relevant campaign literature and press reports. Interview the candidate or someone who worked on the campaign. How did publicity address the judge's skills, political stance and personal beliefs? What political issues were raised in the campaign? Present your findings in a research paper.

A Matter of Interpretation

John Marshall and Thomas Jefferson were distant cousins. Jefferson's great-grandparents, William and Mary Randolph, were Marshall's great-great-grandparents. But these two men could not have been more different. They became bitter political, and personal, enemies.

The two men often fought over the Constitution's meaning. Jefferson believed each phrase meant exactly what it said, no more. With this narrow interpretation, he hoped to restrict federal power.

John Marshall also looked closely at the Constitution's words, but he interpreted them broadly. He wanted to give Congress, the President and the federal courts implied as well as expressed powers. The difference is not in the words, but in the meaning one chooses to give them.

Step 1. In Article I, Section 10, the Constitution says states cannot:

a. Enter into any agreement or compact with another state or with a foreign power, without the consent of Congress.
b. Coin money, emit bills of credit, or make anything but gold or silver coin a tender in payment of debts.
c. Pass any law impairing the obligation of contracts.
d. Engage in war without the consent of Congress, unless actually invaded or in such imminent danger as will not admit of delay.

Choose one of these denied powers and interpret the words narrowly. What can't the states do?

Step 2. Now interpret the same words broadly. What other powers are, by implication, forbidden the states?

Step 3. In your view, which version is correct? Be prepared to explain why.

Decisions, Decisions

Step 1. Two of John Marshall's important cases are described below. Read the facts and arguments for the case you've been assigned. In your view, which side should win? Why?

Step 2. Choose someone in your group to be Chief Justice. He or she should lead a group discussion of the "Questions for the Court" listed below your case. As you discuss the case, try to get others to agree with your views.

The Reverend Samson Occum, 1768. *National Portrait Gallery, Smithsonian Institution, Washington, D.C.*

Step 3. After you confer, the Chief Justice should ask each person to state which side should win the case and why. If your group agrees about the case, organize your reasons so the Chief Justice can present them to the class. If you disagree, prepare the Chief Justice to present both majority and minority views.

The Business of America

In 1743, a minister of the Congregational Church named Eleazar Wheelock began to tutor Samson Occom, a Mohegan Indian. Occom and Wheelock's other native American students proved such adept scholars that the churchman sent his prize pupil to England to raise money for a school. In 1769, Occom returned with £ 12,000 and a charter from the King and Parliament to teach Christianity to the Indians and encourage learning and piety in New England. Wheelock and eleven others were made trustees of the new school: Dartmouth College.

Half a century later, Dartmouth had became New Hampshire's leading school. As part of the Congregational Church, the state's official religion, the college backed the Federalist Party. Though this faction had long run the state, Presbyterians and the new Republican Party now challenged its power. In 1816, when Republicans won control of the state legislature, this political conflict split Dartmouth in two.

Even though Dartmouth was a private college, the Republicans passed a law to enlarge its board of trustees and place them under state control. The newly appointed trustees promptly fired the college president and his supporters, who moved to a new building with most of the students and continued classes.

One key employee, however, sided with the new trustees. As Dartmouth's secretary and treasurer, William H. Woodward had possession of the school's account books. The expelled president and old trustees, claiming that they were the real Dartmouth College, demanded that Woodward return the school's records. When he refused to do so, they sued him. In March, 1818, the case reached the U.S. Supreme Court.

Eloquent Daniel Webster pled the case for Dartmouth's old trustees. He argued:

- The 1769 charter was an agreement between Dartmouth's trustees and Parliament. It was not fair or legal to change the terms of that contract once they were set.
- Because it was not a party to Dartmouth's contract, New Hampshire had no right to pass laws changing the school. The new law was not valid.
- Dartmouth's money came from private, not public sources. The state could no more replace the school's trustees than it could fire a shipyard owner.

On Woodward's behalf, lawyers for the state-appointed trustees argued:

- Times had changed since Dartmouth's charter was drawn, and the school must change with them. Otherwise, in Thomas Jefferson's words, "the earth belongs to the dead and not to the living."
- As grantor of the charter, Parliament could have made changes in it. This power, like others which had belonged to Parliament and the King before the Revolution, now fell to New Hampshire and its lawmakers.
- State lawmakers had no right to change the school's charter because Dartmouth was a corporation set up for public purposes.

Questions for the Court:

a. What are the legal issues before the Court? Why might the Constitution forbid New Hampshire's law?

b. Why might state lawmakers have the right to change Dartmouth's charter? Why might they lack that right?

c. Dartmouth College is a corporation, a group of people acting as one. Imagine Parliament gave the charter to a single person rather than the group of trustees. Would that change the state's right to alter the charter? Why or why not?

d. If you rule for Woodward, how might that affect other people and corporations who have agreements with states? What effects might a ruling for Dartmouth have?

The Trail of Tears

In 1802, the Cherokee nation signed a treaty with the federal government. They agreed to give the U.S. their land in Georgia as soon as a reasonable exchange could be worked out. In return, Congress promised that "their lands and property should never be taken from them without their consent." Fifteen years later, about half the nation came to terms with the U.S. and moved west.

The Cherokee left in Georgia showed little desire to leave. In 1828, they adopted their own national Constitution. Angry Georgia lawmakers responded by seizing the nation's land and voiding its laws. Further, to cut off "outside agitation," they made it a crime for whites to live among the Cherokee. Under their new law, whites had to swear their loyalty to the state and get a permit if they wanted to visit native Americans.

The Cherokee appealed for federal help to no avail. Having made his name as an Indian fighter, President Andrew Jackson did not sympathize. Nor did Congress, which in 1830 decided to remove the nation, if need be, by force.

Meanwhile, back in Georgia, a missionary named Samuel A. Worcester was convicted of living with the Cherokee and sentenced to four years hard labor in a state prison. His appeal reached the U.S. Supreme Court in February, 1832.

Reverend Worcester's lawyers argued:

- The Cherokee nation was a foreign government with which the U.S. had a treaty. The Constitution denied states the power to change treaties.
- States had no right to outlaw behavior in a foreign land. Cherokee land was governed by Cherokee law. Since Worcester did not break any Cherokee law, his arrest was illegal.
- Worcester was a U.S. citizen preaching the gospel in a foreign nation. The U.S. President was supposed to protect citizens abroad.

Georgia refused to argue the case, claiming the Court had no power to review it. State officials believed:

- The Cherokee were not a nation, but a native tribe. Since they lived on Georgia's land, they were subject to Georgia's laws and could not make their own.
- The Constitution gave Georgia the right to protect its citizens by making and enforcing criminal laws.
- For almost 30 years, the federal government had been promising to remove the Cherokee. State lawmakers would betray their duty to the people if they waited any longer.

Questions for the Court:

a. What are the legal issues before the Court? Why might the Constitution forbid Georgia's law?

b. In what ways is the Cherokee nation a foreign government? In what ways is it part of Georgia?

c. What reasons might Georgia have for passing laws to govern the Cherokee and their lands? How important are they?

d. If you rule for the Cherokee, how might that affect other native American nations? Other states or foreign governments? How might a ruling for Georgia affect these groups?

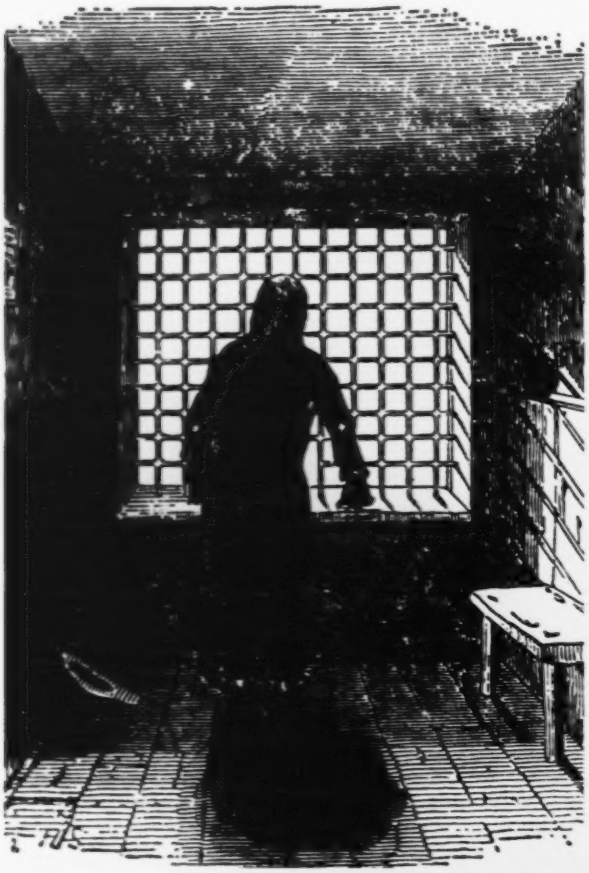
For Discussion

1. Review John Marshall's decisions about these cases with your teacher. How do they reflect his broad interpretation of the Constitution?
2. How did Marshall's *Dartmouth* ruling shape the growth of American business? Should a group have the same property rights as a person?
3. Do you think Marshall's Federalist politics prejudiced his ruling in the first case? Why or why not?
4. In Marshall's view, mistreatment of native Americans was leaving "a deep stain on the American character." Do you think this personal belief prejudiced his ruling in the second case?
5. Compare the effects of the *Marbury* and *Worcester* rulings. What might happen today if Congress and or the President ignored a Supreme Court decision?

Follow Through: John Marshall died in office on Monday, July 6, 1835. During his 35 years on the Court, he resolved more than a thousand cases. Chief Justice Earl Warren said he left a "greater imprint on our legal institutions than any American to this day." Why? After researching three other important cases Marshall decided, explain your answer to this question in an essay.

Washington, D.C. in 1834, the year before Marshall's death. *Library of Congress.*

Unit 3: Cruel and Unusual Punishment: Dorothea Dix and Prison Reform



Debtors' prison. *Courtesy of Weidenfeld and Nicolson Archives.*

A Horror Story

A bitter east wind swept Boston on March 28, 1841 when the new Sunday School teacher, tidy Dorothea Dix, arrived at East Cambridge Jail. Stench from the surrounding swamp mingled with the heavy smell of unwashed inmates. A class of 20 women — thieves, prostitutes, alcoholics, outcasts — had been assembled. The Bible lesson on Mary Magdelene met stony resistance. Miss Dix, though, had learned to relish small successes and a few prisoners did join in the hymn.

Unwed and almost 40, Dorothea Lynde Dix, by the standards of her day, was finished. In her early 'teens, she had run away from difficult parents and begun a brilliant teaching career. She founded two popular schools, experimented with teaching the poor and wrote six books — one a best-seller. Then, in 1836, her world came crashing down. Overwork brought on a nervous breakdown. Worse, she began to cough blood, a sure sign of fatal lung disease. Miss Dix had been resting ever since. She was not expected to live much longer.

When Dix volunteered to teach at the jail, her friends said the inmates would appall her. They did, but so did the jail itself. Before leaving that Sunday, Dix took a look around. Trailed by a nervous jailer, she examined cells and talked with prisoners. Suddenly, an eerie wail echoed down the halls.

Who was screaming? And why? Just a mad one, said the jailer. Miss Dix wondered why a lunatic would be in jail. Surely the insane went to asylums. Oh no, the jailer told her, most went to jail. He had several at the moment. Miss Dix wanted to see them. He couldn't possibly show her: they were too disgusting. She insisted.

The jailer led her to a barred door and gingerly opened it, just a crack. Out rushed a foul odor. Peering in, Dix saw a small stone room, bare but for a few piles of rotting straw and a half dozen huddled bodies, shivering in thin rags. She pushed at the door, but the jailer barred her way. Those people were mad, he warned. Those people were freezing, said Dix. They needed heat and clothing and probably food. The jailer just stared. The insane couldn't feel heat or cold. Everybody knew that.

Just then, the scream sounded again. It wasn't coming from the mad room. With great reluctance, the jailer opened an adjoining cell. Even smaller than the first, this stone room had been divided with rough boards into two pens. In one, the wild-eyed screamer, an almost naked woman, raved and raged. In the other, a normal-looking young woman, with a hint of vagueness about her eyes, cowered. Each time the one howled, the other whimpered in fear.

Dix demanded to know how long these two women had been locked up together. For months, replied the jailer. But they weren't really together. Those boards kept them apart. Otherwise the wild one would have ripped the other to shreds long ago.

Something snapped in Dorothea Dix on that first day at East Cambridge Jail. She moved quickly to help the inmates she'd seen. She took them food and blankets and coaxed two male reformers into confirming her findings and forcing authorities to heat the cells. But what of those she had not seen? How, in this modern day, in enlightened Boston, could public officials treat anyone so cruelly? Why were insane people jailed at all?

Dix began to investigate. She visited hospitals and asylums. She questioned doctors and experts on the poor. She found out that private asylums had abandoned the "lock them in the closet" approach to the insane. Experiments with humane care and various therapies had improved cure rates. Educated people no longer thought that the mad and mentally retarded were possessed by devils, morally impure or unable to feel pain. Unfortunately, most of those who ran almshouses, poorhouses and jails were not educated and still believed these myths.

Dix also found out why insane, simple-minded and even physically impaired people were sent to jail. Under Massachusetts law, people judged unfit to stand trial had to be locked up until they proved able to handle themselves or until someone took responsibility for them. Further, each county

had to support its own pauper insane. Where else could counties imprison their charges but at the local jail or poorhouse?

A recent law, passed at the urging of educator Horace Mann, required that the insane be kept separate from convicts, if possible in asylums. But few counties had public asylums and care in private hospitals cost too much. By the time the state built a public asylum, it was already far too small. Some counties moved their lunatics to separate cells, even unused closets, at the jail. Others paid private citizens a small fee to keep prisoners in attics, cellars or outbuildings.

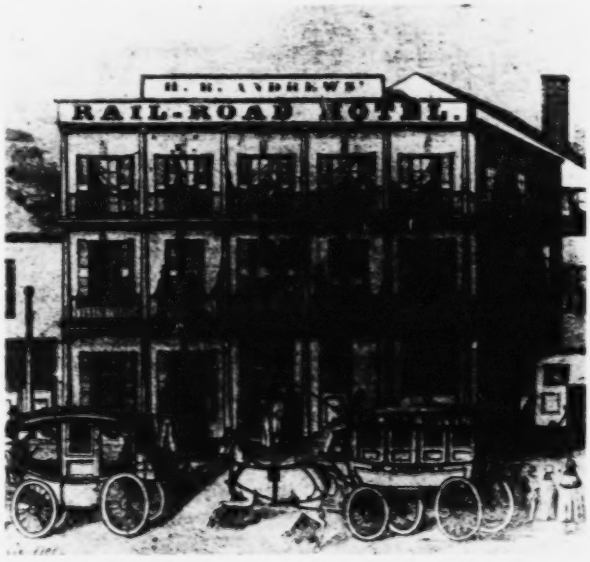
Dix consulted Mann. In his view, the government would not pay for adequate care unless the current wretched conditions were brought to light. Someone must visit each jail, almshouse, asylum and prison in the state and carefully, accurately describe how inmates lived. The reporter would need to be persuasive for, without official backing, jailers might refuse to cooperate. He would need to pay his own expenses: no one would fund such a study. He would need to be smart and honest, or no one would believe his findings. Alas, Mann lamented, who capable of such a project would be willing to undertake it?

Dorothea Dix was willing and able. In the early summer of 1841, over the protests of friends and the threats of relatives, she began an 18-month tour of Massachusetts. She jostled through smoke and cinders along the state's few railways, creaked by stagecoach down the highways, spent nights in tavern corners or, bolt upright, on station benches. She always emerged clean and prim enough to awe the most suspicious jailer. She visited every institution in the state, some more than once, and took careful notes.

> *Shelburne.* November. Reached a house of most respectable appearance. . . . [In the yard] was a small building of rough boards imperfectly joined. This shanty, or shell, enclosing a cage, might have been eight or ten feet square. A narrow passage within allowed [one] to pass in front of the cage. Very cold, air within burdened with most noisome vapors. All still save now and then a low groan. At last I saw a human being, partially extended, cast upon his back amidst a mass of filth. . . . "Can he not have some clean, dry place and a fire?" "As for clean, it will do no good," [the keeper replied.] "He's cleaned out now and then, but what's the use for such a creature? If he had a fire, he'd only pull off his clothes."
>
> *Newburyport almshouse.* Eighty inmates, seven insane, one idiotic. . . . I desired to see [one subject]; much reluctance was shown. She was "dangerous to be approached," said the Master of the House, "had lately attacked his wife," and was "often naked". . . . A door to a closet beneath the staircase was opened, revealing in the imperfect light a female apparently wasted to a skeleton, partially wrapped in blankets, face furrowed by suffering. In that contracted space, unlighted, unventilated, she poured forth the wailings of despair. "Why am I consigned to hell?"
>
> *Newton almshouse,* a cold morning in October. I ascended the stairs in the woodshed, and passing through a small room, stood at the entrance of one occupied. With what? The furniture was a wooden box or bunk containing straw, and something I was told was a man. Protruding from the foot of the box was — it could not be feet! Yet from these stumps were swinging chains, fastened to the side of the building. The master told me his history. The old man had been crazy above twenty years. As until recently the town had owned no farm for the poor, he had annually been put up at auction. A few winters since, being kept in an outhouse, the people "did not reckon how cold it was," and so his feet froze. "Are chains necessary now?" I asked. "He cannot run away." "No, but he might crawl forth and in his frenzy do some damage."

The vast majority of the insane people Dorothea Dix found in jail were locked up because no one knew what else to do with them. They were treated cruelly, not as punishment, but out of ignorance. Still, Dix found many jailers and citizens who believed insanity was caused by sin, as were poverty and other misfortunes. In this view, lunatics and paupers did deserve punishment.

In January, 1843, Dix submitted a report to the legislature. She asked for money to enlarge the state's only asylum. This report has been called the nation's first piece of social research. At the time, it was also called a pack of lies.



Travel in 1835. *Courtesy of Engineering-Transportation Library, University of Michigan.*

Jailers, officials and citizens took the report as a personal insult and tried to prove abuses didn't exist in their towns. The press claimed that Miss Dix suffered from an overactive imagination: perhaps half her stories had some truth to them. In spite of the attacks, state lawmakers endorsed the Dix report and approved money for adding 200 rooms to the state asylum. By then, Rhode Island clergymen had invited Dix to examine conditions in their jails.

1. What do you think motivated Dorothea Dix?
2. Why do you think Dix's friends and relations opposed her project?

3. How did laws in Massachusetts affect the pauper insane?

4. Often, ordinary people who find something wrong with society don't know how to change things. They must invent their own process for reform. What steps did Dix take to correct the evils she saw?

5. The government did not support Dix's investigation. Should private citizens be allowed to inspect government institutions like jails and schools? Should they be allowed to examine records and finances? Why or why not?

Follow Through: In looking at Dix's achievements, one must consider the peculiar status of women in 19th-century America. In 1840, did laws in your state affect a woman's ability to earn wages, own property, conduct business or vote? Did the same laws apply to married and single women? What social rules or conventions governed a woman's behavior? Write a paper explaining how at least three laws or rules would have affected Dix's work.

The Poor Commission

Under the feudal system, centuries ago, communities tried to absorb those unable to care for themselves. As this way of life broke down, views about the poor shifted. Instead of protecting the needy, towns and counties began to demand protection from them. The poor might be whipped, branded, jailed or, most often, run out of town. This attitude favored the community's welfare over the needs of individual poor people. It moved with the English to the American colonies.

In some places, the sheriff or mayor decided what to do with local people who couldn't fend for themselves. Many towns gave this responsibility to a small group of prominent men. Their main goal was to protect citizens and their property without unnecessarily draining the town treasury. With varying degrees of ability and compassion, the men on Commissions for the Poor faced hard decisions.

Imagine you belonged to such a commission in the 1840s. You've been given responsibility for the following cases. All are destitute: they have no friends and no money.

Case 1. Samuel, age 52. Once a newspaper editor, then a state senator and a judge, he began to drink heavily when his wife and two sons died in a sailing accident. He lost his job, then his home and, finally, his mind. He is very confused and laughs at inappropriate times. He wants to keep himself clean, but can't.

Case 2. Sarah, age 8. She was born deaf and blind and does not speak. No one knows for sure who her father is, but rumor points at one of the innkeeper's sons. Her mother, who sometimes worked at the inn, died of fever a few weeks ago.

Case 3. Old Bone. She appeared in the local woods about four years ago, taking over a one-room cabin deserted when a family moved west. After she beat up a dog in the center of town and stole its food, people began leaving her scraps. Two evenings a week, she'd wander through town, collecting food and muttering obscenities. Last month, her shack burned down. She's in town all the time now.

Case 4. Thomas, age 18. When his parents died, he moved to his uncle's farm. He's tall and strong, but he won't work. His uncle gives him a task and later finds him staring into space. At first, when asked why a job wasn't done, he looked puzzled and said he forgot. Now he yells and cries. Pleading, threats, even beatings haven't helped. Frustrated, with many mouths to feed, his uncle has thrown him out.

Case 5. Anna, age 27. An attractive young woman from a respectable family, she refused to leave the house after her fiancé broke their engagement. She became obsessed with a family friend. When he rejected her advances, she tried to kill her parents. After two years at the state asylum, doctors released her. They believe she is incurable and need room for people who can be helped. Between periods of exhausted calm, she screams threats, beats against the walls and rips off pieces of her own skin.

Step 1. The Commission must decide what to do with one of these individuals. What are your options? As a group, brainstorm ways of handling the case. Include the possibilities described in "A Horror Story," but don't limit yourselves to them.

Step 2. Discuss each option on your list. Would it help or harm the community? How? How would it affect the individual? Select the option you think is best.

Step 3. Prepare to present your decision to the class. Be sure to describe the case, identify at least three options you considered and state and support your recommendation.

For Discussion

1. Which, if any, of the people in these cases are responsible for their own conditions?

2. Have any committed a crime? Should any be punished?

3. What will the town have to spend money on if it accepts your recommendation? Is expense the most important factor to consider in deciding what to do with these people?

4. Should the town be responsible for taking care of these people? If not, who should be responsible?

5. If these five people lived in your community today, what would happen to them? What laws might apply to them?

Follow Through: The plight of our nation's homeless is much in the news. Review recent magazine articles and video specials to research this subject on the national level. Then, examine the problem in your community. How many homeless people are there? (Numbers will vary depending on your source, so check at least two.) Who are they? Where do they live? How and what do they eat? Are there programs to help? When you present your findings, describe at least three local groups working with the homeless.

The Corner

Clear the furniture from one corner of your classroom. On the floor, with masking tape, mark off a rectangle 7' wide by 3'6" long. Place a line of masking tape at a height of 7' on both corner walls. Sit on the floor in the corner. Imagine the walls are made of stone. It is cold and damp. Picture the two missing walls. One has a barred door in it.

Sing Sing Prison, built in 1825, had 1,000 cells just like this. Prisoners left their cells only to work, eat or be punished. One prisoner in 10 would serve a sentence of more than 10 years.

In another corner, mark out a cell 11'9" long, 7'6" wide with a 16'6" ceiling. Inside, tape off a 4' by 4' space for a weaving loom. This was the size of a cell in Pennsylvania's Eastern Penitentiary which ran on the solitary system. Prisoners ate and worked inside their cells. Once locked in, they did not leave until their sentence had been served.

Behind Bars

In the 1840s, treatment of the insane was Dorothea Dix's prime concern, indeed her obsession. But touring state after state, at first on her own initiative, then by invitation, she came to know more about jails and prisons than anyone else in the country.

In colonial America, locking people up was not the preferred way of punishing them. It was thought more effective, and was less expensive, to inflict immediate physical pain. Towns had jail cells to hold suspects, but soon after conviction, the criminal was whipped, branded, ducked in water, mutilated, set in the stocks or hanged.

By Dix's day, only one state — Delaware — still clung to this system. The state had no prison: convicts went straight to the stocks, the whipping post or the gallows. Delaware claimed it had less crime than its neighbors and that second convictions were rare. But, as Dix pointed out in one report, statistics suggested that Delaware's native criminals hadn't reformed. They'd moved to Pennsylvania.

Punishment in Delaware, 1868. ***Courtesy of American Correctional Association (Library of Congress).***

Pennsylvania had special prisons. Fifty years before, the Society of Friends (or Quakers), whose religious views opposed violence, had introduced the notion of isolating criminals instead of whipping them. Stuck alone behind thick walls for long periods of time, the prisoner could think about his or her misdeeds and become penitent. Hence, the term penitentiary.

In 1843, a convict wrote Dix about life in a Pennsylvania prison.

> "I have been confined in prison nearly two years. My sentence is for ten years, for coining Spanish quarter dollars. . . . At the time I came, I was sick and debilitated, but my health has improved. I have not once been out of my cell. It is well warmed and ventilated. . . . Solitude has necessarily led me to reflection. . . [and] convinced me that I have been a drunkard for the 25 years previous to my coming here. . . . My labor is making heddles for the weavers. It is not so laborious but that I have time for study. Besides the Holy Scriptures and Book of Common Prayer, which I resort to morning and evening daily, I have several works on moral and scientific subjects. . . . I feel satisfied that the solitary system is best adapted to. . . effect a cure of that moral disease called crime."*

Because prisoners never left them, cells in the Pennsylvania or "solitary" system were fairly large. Such prisons could hold fewer prisoners. The resulting expense made some officials wary. Others pointed out that, though convicts in solitary cells earned money at weaving, shoemaking and other crafts, they could be used more profitably as industrial labor. Still others said permanent solitude was cruel torture.

As a result, the "work" or "silent" system emerged at a prison in Auburn, New York. Though locked in their cells for 14 or 16 hours a day, inmates were released to eat in common rooms and work at prison industries. However, to keep them focused on their crimes, they could never speak. (Sing Sing ran on this plan.)

Dix found fault with the Auburn system. First, prisoners who worked all day had little time for the study and reflection they needed to change their ways. Second, denied speech, convicts soon learned to communicate with coughs, sneezes and signs. In an 1844 survey, almost 30% of Sing Sing's prisoners blamed evil company for their crimes. Letting them mingle with other criminals was senseless. Finally, group discipline could not be maintained without resorting to physical abuse.

Supporters of both systems fought to prove their plan superior. Each side publicized incidents of cruelty and neglect from the other's prisons. Some states adopted a mix: many New England prisoners ate in their tiny cells, but worked elsewhere. By the 1840s, the Auburn system was winning. It still influences prison design today.

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*From *Remarks on Prisons and Prison Discipline*, D.L. Dix, 1845.

1. Those who study crime suggest four purposes for punishment:

   - Restraint: To protect others from the person's actions.
   - Retribution: To make the person suffer for having committed some wrong.
   - Deterrence: To show the person and others that committing a wrong act has painful results, in the hope of preventing future crimes.
   - Rehabilitation: To change the person's behavior so she or he will no longer commit crimes.

   Which of these purposes are served by (a) Delaware's system, (b) the Pennsylvania or solitary system and (c) the Auburn, work or silent system?

2. Pennsylvania's prisons horrified Charles Dickens, a British novelist and reformer. After a visit in 1842, he wrote:

   > "I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment . . . inflicts upon the sufferers . . . . I hold this slow and daily tampering with the mysteries of the brain to be immensely worse than any torture of the body."

   Compare Dickens' view of the solitary system with the prisoner's quoted in the text. Which is more believable? Which do you think is more accurate? Why?

3. The Pennsylvania system was introduced in the 1790s; the Auburn, in the 1820s. How do these systems reflect changes in the U.S. economy?

Follow Through: To many people, the kind of rehabilitation Dix supported would be more accurately called brainwashing. Anthony Burgess' futuristic novel, *A Clockwork Orange*, both satirizes and questions attempts to reform criminals. In a book report on the novel, focus on these themes.

Cruel and Unusual

In Amendment VIII, the Constitution forbids "cruel and unusual" punishments. No punishment is meant to be pleasant, but what makes certain sentences cruel and unusual? In defining this phrase, the Supreme Court has always chosen to be flexible. Further, as society's ideas about humane behavior have changed, the Court has changed its standards.

Today, the Court holds that Amendment VIII forbids:

- Torture and other barbarous kinds of punishment, and
- Punishment that is excessive.

Punishment is excessive, the Court has said, if it inflicts pain needlessly or wantonly. Sentences grossly out of line with the severity of a crime are also excessive punishment.

These standards clearly outlaw use of the rack and thumbscrew, ancient tortures now seen as barbarous. They forbid the random beating of prisoners, as this is a wanton infliction of pain. They also prohibit sentencing a jaywalker to 12 years in prison because the punishment is far more severe than the crime. However, other cases are less obvious.

Step 1. Discuss the six punishments below with your group. Which do you think meet the Court's standards?

a. A five-year sentence in a prison run on the solitary system, for armed robbery.
b. A public flogging of ten lashes, for armed robbery.
c. Ten lashes, for shoplifting.
d. Fifteen days in the county jail, for being drunk in public.
e. Castration, for a man repeatedly convicted of sexual offenses.
f. Six months of confinement in her own tenement building, for a slum lord convicted of repeated housing code violations.

Step 2. Now discuss whether, in your own opinions, any of the punishments are cruel and unusual. Be prepared to explain your answers to the class.

For Discussion

1. Are the Court's standards too lax? Too tough? How would you define cruel and unusual punishment?
2. Do you think any of the punishments listed were considered cruel and unusual in Dorothea Dix's day? Why or why not?
3. Should the Court's standards for forbidden punishment change as society's views change? Does this undermine the framers' intentions?

Pennsylvania's Eastern State Penitentiary. ***The Historical Society of Pennsylvania.***

Prisoners at Auburn, New York, 1840. *Library of Congress.*

4. Most people convicted of felonies lose the vote and other civil rights as well as their freedom. With the eighth amendment, however, the Constitution extends some protection to convicts. Does this benefit society? Should convicts receive this protection?

5. The Supreme Court has held that the death sentence is not cruel and unusual punishment if the judge and jury who pass it have followed certain rules in weighing the circumstances of the crime. Do you agree? Why or why not?

6. What kinds of punishment are used today? Which might be considered cruel and unusual by future generations?

Follow Through: The U.S. currently has half a million prisoners. Our prisons are packed: 85% have more prisoners than places to put them. Overcrowding can breed unrest, disease and violence. Some people believe that any sentence to an overcrowded prison is, of itself, cruel and unusual punishment. Research conditions at jails and prisons in your area. Investigate court rulings on the subject. Prepare and present a debate on whether overcrowding has made incarceration cruel and unusual punishment.

Correcting Corrections

It is 1845. You are sitting in your study with Miss Dix's new book, *Remarks on Prisons and Prison Discipline*. The thin pamphlet includes a rundown on every state prison in the nation. As a member of the Board of Governors for your state's prisons, you have been asked to report on the reforms Miss Dix recommends. Do they have merit? On which, if any, should the Board take action?

Health. The quality of food, heat, clothing, water and air varies from prison to prison. Though Dix has noticed improvement, particularly in diet, most prisons do not yet meet basic needs. Charleston prisoners jump once a week into a sewage canal. That is their bath. Auburn cleans its cells with a gas so irritating it corrodes metal. Sing Sing has days when a quarter of its inmates are too sick to work. Some prisoners die from floggings because their jailers can't distinguish between illness and stubbornness. All prisons should employ a competent resident doctor. All should provide adequately for convicts' well-being.

Education. Most convicts lack education and prisons are not meeting this need. Prisons should provide daily lessons in reading, writing and arithmetic from a qualified school teacher and daily visits from clergy of all faiths. Convicts who do not speak English should be taught the language. Prison libraries should be well-stocked and easy to use. Bibles and prayer books should be placed in each cell. Most important, officials should allot time each day for prisoners to study.

Guards and Wardens. Some prison officers are excellent; many mean well; most are not able to govern normal men, much less convicts. They become either soft or brutal. Wardens and guards should be chosen for their moral character, leadership ability, patience and fairness, not their political connections. Because contact with prisoners tends to brutalize people, officers should only serve for five- or ten-year periods.

Sentences. Convicts are sentenced to long terms for fairly minor crimes. According to one warden, unjust sentences destroy discipline. Prisoners who cannot foresee their release have no reason to behave well or improve themselves. Sentences of ten years or more should not be imposed for crimes less than willful murder. However, once sentenced, convicts should not be pardoned. Because states issue so many pardons, many prisoners arrive certain their friends or lawyers will arrange a quick release. Though the hope may prove false, why obey rules or try to reform if you'll soon be free?

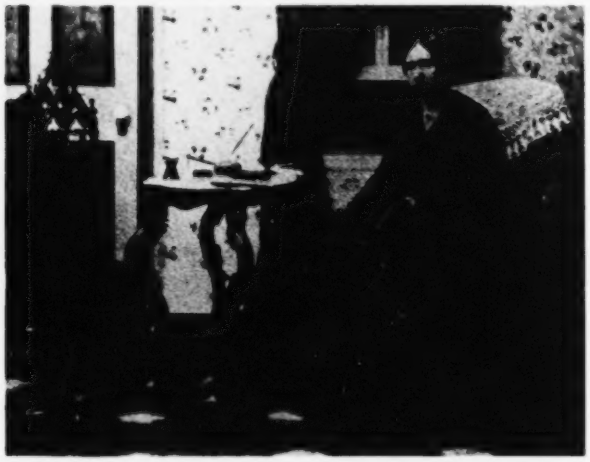
Punishment. Prison rules forbid the obvious: stealing, violence, trying to escape. They also forbid talking (7 lashes), singing in the cells (10 lashes), refusing to work (15 lashes) and insolence (up to 20 lashes). Convicts are flogged with a cat o' nine tails (a whip with nine strands). Inmates who break the rules may also be deprived of food or bedding, drenched with ice-cold water or locked in irons, in a dark cell or (under the Auburn system) in solitary. Such treatment maims or kills dozens of inmates.

Though corporal punishment hardens criminals without changing behavior, Dix feels it is necessary. However, punishments which can permanently hurt the convict should be banned. Convicts should be flogged only in the warden's presence and never by an angry guard. Prison rules should

be enforced consistently, the same offense always resulting in the same penalty.

Visitors. In the two years before this report, almost 15,000 people visited Auburn prison. They paid a quarter each, half price for children, to wander the grounds and stare at the convicts. The widespread practice of exposing convicts to spectators degrades and debases the prisoners for the amusement of the curious and the thoughtless. It should not be allowed.

Work. Too many states are trying to make money off convict labor. Excessive labor interferes with efforts to educate and reform prisoners and should be forbidden. If convicts do earn money, at least part of it should be set aside as a nest egg for their release.



Dix in later life. ***By permission of the Houghton Library, Harvard University.***

Step 1. Discuss these questions raised by Miss Dix's recommendations.

a. Though she thinks coddling criminals makes them more vicious, Miss Dix believes convicts should be treated humanely. "Man is not made better by being degraded." Do you think convicts deserve humane treatment? Why or why not?

b. Miss Dix wants to reform convicts. Do you agree that this is the purpose of punishment? Do you think the public agrees?

c. Will any of Miss Dix's changes benefit convicts at the public's expense? Is this fair to the public?

d. Which of the abuses Miss Dix points out need immediate attention? Which of her recommendations can wait?

Step 2. Based on your answers, write a memo to the other members of the Board of Governors. Which of Miss Dix's suggestions would you support? Which should be ignored? Why? In your memo, you must respond to at least four of the recommendations.

Follow Through: Arrange for a class screening of the film *Scared Straight* or another documentary or filmstrip about life in prison. View the film in advance and develop a list of questions for the class to discuss after the screening.

A Life's Work

Dorothea Dix logged more than 60,000 miles in her first decade of research and lobbying. She visited more than 10,000 prisoners, handing out clothes, books and counsel. She wrote, promoted and saw passed 16 bills to construct or enlarge state asylums. Often she then chose the site and helped design and staff the hospital. In September, 1846, while touring a hospital in Columbus, Ohio, she collapsed. Her lungs had failed again.

Though resentful and discouraged, Dix spent much of her enforced rest thinking. Wherever she went, begging for better asylums, she got the same response: not enough money. Paying for care of the insane was a national problem. Perhaps the federal government could solve it. Time for another petition — this one to Congress! Dix asked that several million acres of federal land be sold to pay for care of the nation's insane.

The congressmen liked Dix. Her cause had won public sympathy and she knew how to persuade. "I have not come to ask any favor for myself, not the smallest," she told a reluctant senator. "I ask for yourself, your state, your people." Yet it took Dix *six years* of work to get her bill through Congress. Finally, in 1854, both House and Senate passed it by large majorities.

Imagine Dix's dismay when President Franklin Pierce raised an objection. In his view, her bill was not constitutional. The problem was federalism — the balance of powers and responsibilities between state and federal governments. The Constitution does not cite care for the poor as a federal concern. Pierce believed that duty, like other unlisted functions, belonged to the states.

Dix's bill, Pierce admitted, applied only to the *insane* poor. But if Congress had the power to fund care for them, the same power could be used to support *all* poor people. Dix's bill opened the way for the full transfer of a state power to the federal government. "The fountains of charity will be dried up at home," said the president. Soon states would come begging for federal bounty, "reversing their true relation to this Union." To avert this reversal, Pierce vetoed Dix's bill.

Shocked and bitter, Dix soon left the country. While supposedly resting abroad, she exposed scandalous conditions in Scotland's asylums which led to Parliamentary action. She saved an English asylum from falling into the hands of a man known for his evil treatment of inmates. In just one visit, she convinced the Pope to rebuild the Vatican asylum.

When the Civil War broke out in 1861, Dix became head of U.S. Army nurses, the first woman to win an executive post in the federal government. Sadly, she did not know how to train nurses — no one did — and understood little of war. Her demands for perfection and dictatorial ways made enemies right and left. For instance, she insisted her nurses be middle-aged and plain-looking to avoid scandal about their relations with the soldiers. This needlessly excluded many able women. Some ignored her and went to the battlefront on their own. Dix did her best, but she knew she'd failed. "This is not the work I would have my life judged by!"

After the war, Dix resumed her visits to hospitals and jails. She was still pointing out abuses and prodding lawmakers in 1880, at age 78. That winter, she suffered a collapse at Trenton Hospital, one of the asylums she'd founded. Grateful authorities now offered her asylum. She died there in 1887.

1. Why did Dix want to involve the federal government in support for the indigent insane?
2. Should the federal government help poor people? What are the benefits of leaving this duty to state and local governments? To private charities? What are the costs?
3. What jobs did Dorothea Dix hold in her lifetime? What work did she perform for free?
4. Would Dix's life work have been easier if she had been able to vote? To hold elected office? Would these rights have made her more effective?

Follow Through: Does the burden of care for the poor now fall on federal or state governments? Have President Pierce's fears come to pass? Find out what kinds of care the federal government provided for the poor last year. How much, in dollars and as a percent of the total budget, was spent? Get comparable information about your state government. Display your findings in a chart or graph and discuss whether you support these expenditures with the class.

Follow Through: Women took part in the Civil War as doctors, nurses, fundraisers, spies and even soldiers. Research the biographies of two such women: one from the North, one from the South. In a written report, describe their lives and evaluate their contributions.

The Winds of Change

Dorothea Dix was not the only American working to improve conditions in jails or assist the insane. Nor were the evils she pointed out the only practices and policies people wanted to change. Several reform movements swept the country in the years between 1800 and the Civil War.

Step 1. With your team, search the chapters of your U.S. History text that cover the era from 1800 to the Civil War. Look for:

- Names of reformers and reform groups (people and organizations trying to improve society).
- Dates of reform events and achievements (such as meetings, publications, new laws).

You will have 10 minutes. How many items can your team list?

Step 2. On the board, list at least four goals of reform movements during this period. Then, categorize the data your class collected according to the goals. Which events took place first? Did any reformers work on more than one issue?

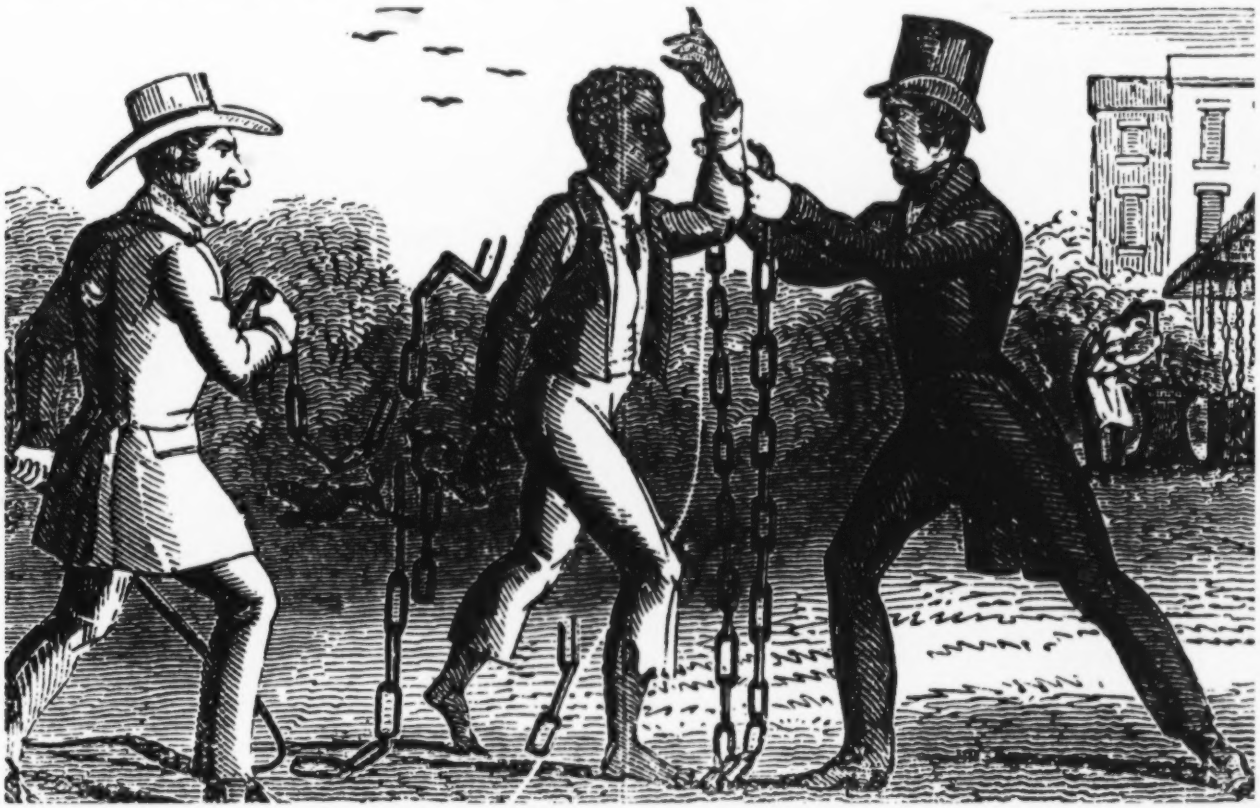
For Discussion

1. How did early 19th-century reformers work toward their goals? Do activists use similar methods today?
2. What education, training or personal qualities might make a reformer effective?
3. How well did these movements succeed? Which goals, if any, did they accomplish before the Civil War? Why do you think some succeeded while others failed?
4. Under our political system, how do reformers benefit society? What problems do they cause? Are they necessary?

Follow Through: Choose one reform movement which did not succeed before the Civil War. Follow its progress during the semester. Were its goals finally accomplished? If so, when and how? If not, why did it fail? In either case, to what extent was the social problem solved? In what ways, if any, is it still a concern today? Present an oral report on your findings.

State Asylum at Trenton, New Jersey, 1848. *Provided by State of New Jersey, Department of Human Services, Division of Mental Health and Hospitals.*

Unit 4: If At First You Don't Succeed: Dred Scott's Case



Passing from slave state to free state. *Slavery in South Carolina*, 1862. *Library of Congress.*

Trials in the News

Bring a recent newspaper article about a trial to class.

1. A trial is a way to resolve disputed facts or issues. What fact or issue is being disputed in the case you found?
2. In a criminal trial, the government tries to prove that a person has violated a law. In civil cases, one person tries to prove that, under the law, she or he has been hurt, cheated or deprived of rights by another. Is your trial criminal or civil? What about the cases found by other students?
3. Based on the trials brought in by your class, what kinds of disputes do civil trials try to resolve? What other issues might civil law cover?

People As Property

The law of property, a major branch of civil law, defines the rights of ownership and covers such issues as how goods can be transferred and what kind of property can be owned. You yourself are a property owner. Bicycles, cars, stereos, records, savings accounts are *personal property* or *chattels*. Land and those things attached to the land are *real property*.

Before Amendments XIII and XIV were added to the Constitution, human beings could be the property of others. Considered chattels by the laws in many states, millions of black Americans were bought and sold, worked and punished as their owners saw fit. Though some slaves bought or were given their freedom, most lacked the money or education to change their status. Slave owners had the law and the power of government on their side.

Nonetheless, many black people worked to undermine the property laws. Some joined movements to abolish slavery. More simply broke the unjust laws and rebelled or ran away. A few took yet another path. They tried to use the law itself to win their freedom.

Dred Scott was born a slave in Virginia sometime between 1795 and 1809 and moved with his first owner, Peter Blow, to St. Louis. When Blow died, his family sold Scott to John Emerson, an Army doctor, who took the slave to Fort Armstrong in Illinois. In 1836, when the Black Hawk war ended, the Army closed this fort and sent the troops to Fort Snelling, an outpost in the Minnesota Territory. Dr. Emerson and his slave went with them.

At Fort Snelling, Dred Scott met Harriet Robinson, a teenager imported from Virginia. Her owner, unlike many whites, believed in legal marriage for slave couples. After Dred and Harriet were wed in a civil ceremony, the young woman's owner gave her to Dr. Emerson so she could live with her husband.

The next year, Dr. Emerson, who didn't like Fort Snelling, got a transfer to Louisiana. He left the Scotts behind, but sent for them when he got married to a woman named Irene Sanford. Within six months, Emerson had tired of Louisiana and the two families returned to Fort Snelling. Travelling upriver on the steamboat *Gipsey*, well north of the Missouri state line, Harriet bore a child, Eliza, her first to survive infancy.

Eliza was 18 months old when the Army sent Emerson to the Seminole wars in Florida. His wife took the slaves to her father's home in St. Louis but, having no use for them, she hired them out. The doctor returned two years later amid rumors that he'd misused hospital funds. He left the Scotts to produce income in St. Louis and took his wife to Iowa, where she bore a daughter and he abruptly died.

Mrs. Emerson inherited the Scotts from her husband. Returning to St. Louis, she rented them to her brother-in-law, a colonel. The slaves were living at the local barracks in 1845 when their second daughter, Lizzy, was born. In March, 1846, Irene Emerson hired the Scotts to Samuel Russell and his wife. A few days later, Dred Scott took Irene Emerson to court. He claimed that he and his family were free.

Open and Shut

Nobody knows why he did it. Years later, one reporter said that Emerson refused to let him buy his family's freedom. Another thought she was about to sell Eliza and Lizzy out of state. One of his lawyers said Scott simply didn't like being hired out to different people all the time. He never stated his reasons in public, but perhaps Scott had just found out an important fact: For the past 20 years, Missouri courts had held that people taken as slaves into free states and territories and then returned to Missouri were not slaves — "Once free, always free."

Illinois, the site of Fort Armstrong, had outlawed slavery in its Constitution. Fort Snelling sat on free ground by federal law. Missouri's Supreme Court had already considered a case much like Dred's. A slave named Rachel had been taken to Fort Snelling by an Army officer and then returned to St. Louis. In 1837, the Court freed her. The Scotts' case seemed open and shut.

The Scotts needed special permission to pursue their case because, normally, slaves could not bring suits. However, Missouri had just passed a law giving slaves a way to sue for freedom. First, they had to state their claims in a petition to the court. In early April, a St. Louis judge approved petitions from both Dred and Harriet. He ordered them to post a bond for court costs. (If the Scotts lost, they'd have to pay for the trial.) He also ordered Mrs. Emerson not to punish them for the suit or take them out of the state.

To gain their freedom in Missouri, slaves sued their owners for the civil offense of "trespass for false imprisonment." As in any civil case, the *plaintiff* — the person who feels wronged — had to file a *cause of action* with the court. Such a document must state:

- That the plaintiff has a specific legal right. (The Scotts had the right to be free.)
- That the defendant has interfered with that right. (Mrs. Emerson held the Scotts in slavery.)
- That, because of the defendant's action, the plaintiff has suffered damage. (Missouri's law set damages at $10.)

A copy of the cause of action must be given to the defendant, who may respond by *demurring* or by *answering*. First, Emerson's lawyers demurred. This means they found a flaw in the cause of action or in how it was filed. Specifically, they said that Dred had not posted a bond to cover court costs. When Dred's lawyer put up the money, Emerson's lawyers then answered the cause of action by denying it. They told the court that the law did not support the Scotts' claims to freedom.

At last, a judge reviews the cause of action and the defendant's answer. If the cause of action is in order and the defendant has found no legitimate grounds for demurral, the case will go to trial. Dred Scott's case was set to be heard on June 30, 1847.

1. Why do you think the Scotts brought suit? Why didn't they sue when they lived at Fort Snelling?
2. Why do you think Irene Emerson fought the Scotts' suit?
3. What three major steps take place before a civil case comes to trial? How does each protect people from unreasonable suits?
4. The Constitution addresses civil cases in Amendment VII. Does this amendment apply to Dred's suit? Why or why not?
5. There are few facts about Dred Scott's life, but many legends. One tells how he ran away when sold to Emerson but was easily caught hiding in the local swamp. In another, he was a lazy worker, not worth all the bother he caused. What attitudes about slavery do these stories reflect? Why might they be widely told?
6. Why do you think we know so little about Dred Scott?

Follow Through: In recent years, U.S. historians have tried to reconstruct the lives and experiences of slaves. The task is hard: most slaves were illiterate and the record of their existence was for many years ignored. Read a recently published history of slavery or the biography of a person who was a slave. In a written report on the work, describe at least three of the author's sources. In your opinion, is information from these sources valid? Why or why not?

The First Trial

The two sides in a trial may dispute the facts: they may disagree about what really happened. They may also disagree about how the law should be applied to the facts. During a trial, the jury decides matters of fact: which version of the story to believe. The judge decides which laws are relevant and how they should be applied to the facts.

Step 1. Lawyers present the judge and jury with evidence — witnesses, documents, bloodstains and the like — to support their version of the facts. They also provide the judge with arguments about what laws are relevant and how they should be applied. At Dred Scott's first trial, held before

Harriet and Dred Scott, *Frank Leslie's Illustrated Newspaper*, 1857. *Library of Congress.*

a jury in June, 1847, his lawyers made the allegations below. Which are matters of fact? Which are matters of law?

a. Dred Scott lived at Fort Armstrong in Illinois and at Fort Snelling in the Minnesota Territory.

b. He resided in these places at the direction of his master, Dr. Emerson.

c. Slavery is illegal in Illinois and in the Minnesota Territory.

d. Dr. Emerson treated Dred like a slave during his residences in Illinois and the Minnesota Territory.

e. No one can be a slave in a state or territory which does not recognize slavery.

f. Once free, always free.

g. Since Dr. Emerson's death, Irene Emerson continues to treat Scott, his wife and their children like slaves, hiring them out and keeping their wages.

Step 2. At Scott's trial, his lawyers presented the following testimony to prove their case. After reading each piece carefully, review the alleged matters of fact (from Step 1). What testimony was offered to support each fact?

- Henry Blow stated that his father, Peter, had owned Scott and had sold him to Dr. Emerson.
- Miles H. Clark stated that he was stationed at both Fort Armstrong and Fort Snelling during Dr. Emerson's service. He knew Scott at both places. Scott "was claimed by Dr. Emerson as a slave and used by him as such."
- Catherine Anderson stated that she knew the Scotts at Fort Snelling. During that whole time, "they were held in slavery by Dr. Emerson or by persons to whom they were hired by him. They were universally known to be Dr. Emerson's slaves." Further, when Dr. Emerson was transferred to a fort in Louisiana, he made the Scotts stay at Fort Snelling.
- Samuel Russell stated that he hired Scott from Mrs. Emerson in March, 1846 and paid Scott's wages to Mrs. Emerson and to her father, Alexander Sanford. Under cross-examination, he said that he did not hire Scott himself: his wife actually made the arrangements. Also, he never paid money directly to Mrs. Emerson, only to her father.

Step 3. Under the law, Scott had to establish that (1) his owner took him to live in a free area and (2) his master continued to treat him as a slave. Do you think Scott's lawyers proved both these facts? Why or why not?

For Discussion

1. At Dred Scott's first trial, the judge told the jury to find for the defendant. Why do you think he did so? Do you think this verdict was fair?
2. What kinds of evidence could Scott's lawyers have presented to establish the allegation they left out?
3. Cross examination is a vital part of our legal process. Explain how Scott's first trial demonstrates this.
4. In civil trials, matters of fact must be established by a *preponderance* (the greater weight) *of the evidence*. In criminal trials, prosecutors prove matters of fact *beyond a reasonable doubt*. What's the difference between these two standards? Why do you think our legal system uses different standards for civil and criminal trials?
5. After the verdict, the Scotts' lawyers asked for a new trial to correct their error. Emerson's lawyers argued that a new trial would penalize Mrs. Emerson for the Scotts' failure. Should the Scotts get a second chance to prove their case? Why or why not?
6. At the second trial, Adeline Russell, Samuel's wife, stated that she had rented the Scotts directly from Mrs.

Emerson. The jury ruled in the Scotts' favor. Dred, Harriet, Eliza and Lizzy were officially free. Explain why the first and second juries reached different verdicts.

Follow Through: Visit a small claims court to observe civil law in action. Small claims court rules are greatly simplified. For instance, some don't allow lawyers. In a class presentation, describe the legal processes observed during your visit. Are these informal procedures fairer than those described in the lesson? More efficient? Discuss your opinions with the class.

Shut and Open

As soon as the jury took away her property, Irene Emerson asked for a third trial. The judge turned her down. Then her lawyers appealed to the Missouri Supreme Court. In doing so, they ended the Scotts' brief freedom. Until the case was settled, the family would be treated as slaves.

In the appeal, Emerson's lawyers said that the judge at the second trial had misinformed the jury about a matter of law when he told them that residence in a free area entitled a slave to freedom. In the past, they admitted, Missouri courts had upheld this notion. But it was "based upon false legal principles." It should now be rejected.

No state is forced to accept the laws of other states or territories, the lawyers argued. A state should only do so if those laws supported its own interests. Freeing slaves was not in Missouri's interests. In fact, the free blacks living in the state posed a threat. They would "dissatisfy and corrupt those of their own race and color remaining in a state of servitude."

Scott's lawyers responded that his freedom was a well-established matter of law. In more than 12 cases, the state Supreme Court had held that slaves taken into free territory and returned to Missouri were free. One case, Rachel's, was almost exactly like Scott's. The Court should uphold these decisions, they said, because the law, and respect for it, depended on consistent rulings.

Step 1. Imagine that you are one of the three justices on the Missouri Supreme Court. Discuss these questions with your colleagues.

a. Why should one state recognize the laws of other states? What might happen if states don't recognize each other's laws?

b. Is it fair to force the citizens of Missouri to obey laws and live by principles which they have no voice in establishing? Which go against their interests?

c. Must the Court free Scott simply because it has freed others in similar cases? Or can the Court change its mind?

Step 2. After your discussion, decide whether you should uphold the lower court's decision or overturn it. Be prepared to present your opinion to the class.

For Discussion

1. Your teacher will give you the Missouri Supreme Court's decision. Which opinion — Justice William Scott's or Chief Justice Hamilton Gamble's — more closely matches your own?
2. Did the Scotts and their specific plight receive enough attention during the appellate process? Why or why not?
3. During the appeal, two issues — overt racism and politics — became more pronounced. In what way were the arguments of Emerson's lawyer racist? How does Justice Scott's decision reflect political concerns?
4. In his ruling, Justice Scott refers to certain abolitionist actions. What clashes between pro- and anti-slavery forces took place in the six years before the decision? (Consult your history text.) Do you think Justice Scott's fears were justified?

Making a Federal Case

Dred Scott had followed the legal process to the letter: He sued and retried and appealed. He ran the same risks as every other litigant. And he lost. After six years of effort, he and Harriet, Eliza and Lizzy were likely to live till they died as slaves. In Scott's place, how would you feel about the legal system? About your future? About your daughters' futures?

People who lose state high court decisions can, in certain cases, appeal them to the U.S. Supreme Court. Dred Scott could have done that. But, a few years before, the Court had refused jurisdiction over a case challenging "once free, always free" on purely technical grounds. Scott's legal advisors feared the Court would find a similar way to avoid his case.

To obtain redress from the federal courts, Scott would need a new case, a case with clear federal jurisdiction. By chance, Irene Emerson had moved to Massachusetts where she met and married Calvin Chaffee, an abolitionist doctor. Irene Emerson Chaffee was now a citizen of Massachusetts. Under the Constitution, a citizen of a different state, such as Missouri, could sue her in federal court. Though slaves were not citizens, Scott claimed he wasn't a slave.

Such a case would be difficult, but Scott's lawyers thought it might be won. However, it would take money and time.

Eliza and Lizzy Scott, *Frank Leslie's Illustrated Newspaper*, 1857. *Library of Congress.*

why not charge them for grazing? With the ranchers' support, Quanah took his plan to Washington, D.C. In 1885, the Comanche and Kiowa signed a six-year lease of grazing rights which brought them $300,000 and dozens of paid jobs.

As his success proved, Quanah had already learned a great deal about white ways. Though a fierce and feared warrior before 1875, he had taken the responsibility of surrender seriously. He helped the Army capture renegades, quell rebellions and find whites taken prisoner in the wars. But his real education began when he started searching for his mother, Cynthia Ann Parker.

Cynthia Ann had been captured by Comanche warriors in a raid on a Texas stockade when she was nine years old. A few years later, she married a chief named Peta Nacona. Quanah was the first of their three children. As the years passed, Cynthia Ann refused several offers from white traders to buy her freedom. Then, when she was 33, Texas Rangers recaptured Cynthia Ann and her daughter Prairie Flower. Quanah heard nothing of his mother for the next 15 years.

After the surrender, with help from his former enemy, the Fort Sill commander, Quanah found out that his mother and sister had been taken to the Parker family home in east Texas. Many times, she had tried to return to her husband, but her family wouldn't let her go. When Prairie Flower fell sick and died, Cynthia Ann had starved herself to death.

As soon as he could, Quanah paid his mother's people a visit. While in Texas, he learned the basics of farming. His English improved and his respect for the white standard of living increased. When he returned, he took Parker as a last name. Some tribe members suggested that, since he liked Texas so much, maybe he should move there. Still, his time among whites helped him wheel and deal with the best of the cattle barons and lawmakers.

In 1892, Quanah's skills were sorely tested. "Sooners" and "boomers," white settlers expanding into the Oklahoma Territory, wanted reservation land. Congress decided the Comanche and Kiowa must sell and appointed a commission to negotiate the purchase. Less than eager to give up their land, the tribes bargained to increase the price, reduce the acres and delay the sale. Thinking the best deal had been struck, Quanah helped persuade three-quarters of the tribes' men to sign a sales agreement. Then the Comanche discovered that bribed translators had not accurately described the agreement's details. Further, the Comanches' lawyer was in league with the commission.

Again backed by ranchers who wanted to keep the range open, Quanah lobbied Congress. For the next eight years, he convinced lawmakers to delay the sale — a gain of eight years' grazing rents. But when the deal finally went through in 1900, it did not favor the Comanche in either number of acres or price.

The decade-long land grab increased strain on the reservation. Hinting that the "principal chief" of the Comanche had been bought by cattlemen, some Comanche and many Kiowa opposed Quanah's push for progress. He called his critics "old fogies on the wild road yet." But his zeal for white culture continued to raise eyebrows.

Unlike most Comanche parents, Quanah wanted his children to attend government schools. Taught entirely in English, these schools often tried to turn native American children against their parents' way of life. But Quanah felt the benefits of a white education outweighed the risks. When a white public school rejected one of his sons, he worked with officials to set up a new school district that would teach both native and white pupils. He then took a seat on the school board.

As one of three District Judges appointed to try native American cases, Quanah eloquently mixed U.S. and tribal law. He worked to put a Comanche police force on the reservation. The notion of young men telling older men what to do ran against Comanche tradition. Yet, in a world where the young would boss their elders, better those young be native than white.

Comanche tipi near Fort Sill, 1873. *Library of Congress.*

Quanah also took to white technology. Most Comanches lived in tipis. They gave their government-built houses to the white sharecroppers who farmed their land. With help from a cattle baron, Quanah built a two-story, ten-room house. In 1907, he installed a telephone.

While native elders attacked Quanah for being too white, whites attacked him for being too Comanche. Quanah wore his hair in long braids, a practice forbidden by the government. Once, when an officer ordered a haircut, Quanah pointed to the long queue on the man's Chinese servant and politely said no.

Though he praised Christianity, Quanah practiced a Comanche religion which involved the use of peyote, a natural hallucinogen. He alarmed officials by refusing to give up the ritual. When the new state of Oklahoma met to consider its constitution, Quanah led a delegation to assure that use of the drug in religious rites would not be outlawed.

Bringing a federal suit meant starting all over. Did Dred want to spend another six years, maybe longer, in court?

Step 1. Form groups of four students. Each group should choose one person to play Dred Scott. The other three students will play these roles:

Eliza Scott. You are about 12. Born in free territory — on the steamboat *Gipsey*, in the middle of a river — you should be free. Yet, because the Emersons brought you to Missouri, this last Court decision makes you a slave.

Taylor Blow. You were raised with Dred Scott, who once belonged to your father. Though you have been a great help in the Scotts' quest for freedom, you approve of slavery in general. You also agree with Missouri's High Court that Southern states should not be ruled by Northern laws.

Roswell Field. An abolitionist, born in Vermont, you are now St. Louis' leading land lawyer. A colleague has told you of Dred Scott's case. You think the last Court decision is wrong and worry about its effect.

Step 2. You are meeting in Taylor Blow's kitchen to help Dred decide what to do. He could try to:

a. Escape with his family to a free state.
b. Pressure Mrs. Chaffee into selling him his family's freedom.
c. Start a new lawsuit in federal court.
d. Abandon all efforts and accept slavery.

Consider each option. How might it help or hurt the Scotts? How practical is it? What might your character gain or lose by it?

Step 3. At the end of your conference, Dred must make a choice and be prepared to explain it to the class.

Follow Through: What issues should someone consider when deciding whether to pursue a lawsuit today? Invite an attorney who specializes in civil litigation to class to discuss this question. Consider the costs involved, the likelihood of winning and whether there are principles at stake. How does the attorney help clients make such decisions?

The Third Trial

In November, 1853, a year and a half after the Missouri Supreme Court's decision, Scott's lawyers filed a suit on his behalf in federal court. They charged Scott's owners with civil assault and asked for $9,000 damages. This time, though, Scott did not sue Irene Emerson Chaffee. He sued her brother, John Sanford.

John Sanford and his father had taken charge of Irene's business affairs after her first husband's death. Sanford, too, had moved out of state, to New York where he was active in the pro-slavery wing of the Democratic Party. In suing John Sanford, Scott filed a faulty cause of action. Sanford did not legally own the Scotts. Sanford could easily have demurred for this reason and stopped the case.

Instead, Sanford's attorneys demurred on other grounds. They claimed that, since Scott was black and black people were not citizens, the federal court had no jurisdiction. Attorney Roswell Field replied that free black people could be citizens under certain conditions. On this matter of law, Judge Robert Wells ruled that anyone born in the U.S. and capable of owning property was a citizen having the right to sue. If Scott was free, he could own property. A trial would have to be held to determine whether Scott was free.

At the trial on Monday, May 15, 1854, the two sides did not dispute matters of fact. Both sides agreed that the Scotts had traveled to free areas and that John Sanford, claiming to be their current owner, continued to treat the family like slaves. Scott's lawyers argued that, given these facts, the law said the Scotts were free. Sanford's attorneys claimed the contrary.

Judge Wells' sympathies favored the Scotts; his understanding of federal law supported Sanford. He told the jury that, as a matter of law, taking a slave into a free area only suspended slavery. Returning to a slave state renewed the owner's property rights. Since Northern laws freeing slaves deprived owners of their property rights, slave states could ignore them.

Given these instructions, the jury had to decide for the defendant. Claiming that the judge misinformed the jury, Scott's lawyers appealed to the Supreme Court.

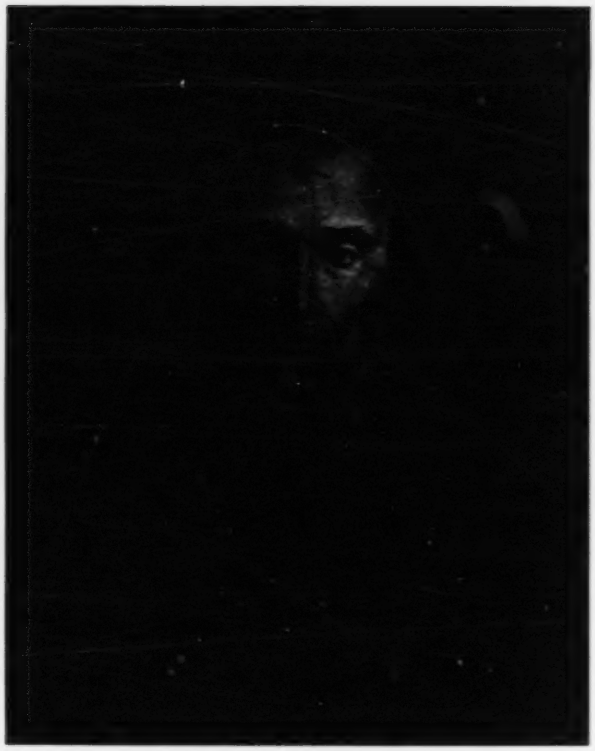
1. What did the Scotts gain by suing John Sanford rather than Irene Emerson Chaffee? What goals might this choice indicate?
2. How could Sanford have avoided the suit? Why might he have chosen to pursue it? What were his other options?
3. No witnesses were called at the federal trial. Why?
4. In what ways, if any, did this third trial benefit the Scotts?
5. By what legal steps did Scott's case reach the Supreme Court?
6. Many history books describe *Dred Scott v. John Sanford* as a contrived case (a case which was concocted to bring certain issues before the courts). Do you agree? Do you think contrived cases are a legitimate use of the court system?

The Test

At the time of his third trial, Dred Scott was an obscure man, his eight-year struggle for freedom almost entirely unknown, even in St. Louis. Only one local paper mentioned the federal verdict, adding good wishes for Scott to its brief case summary. Soon, though, Dred Scott would be famous indeed.

By the early 1850s, the nation already festered with the conflicts that would culminate in, though not end with, the Civil War. They included:

- *Slavery.* To many Americans, slavery was economically unsound, politically impractical or just plain morally wrong. Growing numbers wanted the practice abolished throughout the country. Slave owners had good reason to fear for their property, economic security and way of life.



Roger B. Taney. *Library of Congress.*

- *Racism.* Many whites, abolitionists as well as slavers, believed the black race inferior to the white. Free blacks in free states regularly received shabby, often cruel treatment from their neighbors, the authorities and the law.
- *States' rights.* The fears about federal power evident in the Constitutional debates had not subsided. In states and territories about to become states, those who believed in local control argued that, given half a chance, the federal government would completely take over. The other side described states' rights as an excuse for one region to force its views on the rest of the country.
- *Balance of power.* Slave states had different social and economic interests than free states. Both groups wanted to increase their number so they could assume control of Congress and secure their goals.

For many citizens, all these issues could be neatly focused on one question: Could Congress tell new states joining the Union whether they could practice slavery? For years, as new states organized in the territories, Congress had been passing compromises to keep a numerical balance between slave and free states. Then, just two weeks after Judge Wells' decision, President Pierce signed the Kansas-Nebraska Act. With this new law, Congress reversed decades of compromise and said people in the newly forming states could decide for themselves whether they wanted slavery. Advocates on both sides rushed to the territories to sway these elections.

By the end of 1854, the Supreme Court had agreed to review Scott's case. As it moved forward on the Court's docket, Scott's friends published an appeal for funds and legal assistance. "My fellow-countrymen," Scott asked in the pamphlet, "can any of you help me in my day of trial? Will nobody speak for me at Washington, even without hope of other reward than the blessings of a poor black man and his family?" A prominent Maryland lawyer, Montgomery Blair, agreed to argue the case at no charge. An anti-slavery paper volunteered to cover his expenses.

The Supreme Court did not get to Scott's case until February, 1856. At the hearing, Blair repeated Scott's case for freedom and his opponents stressed Scott's voluntary return to slave territory. Sanford's lawyers also introduced a new argument. They claimed Scott was not on free soil during his time at Fort Snelling. The fort was not a free area because Congress had no right to forbid slavery in the territories.

The Court retired to consider the case but, after several days of intense debate, could not reach a majority opinion. Speculations about the decision and its potential impact began, slowly, to seep into the papers. Then, in mid-May, Chief Justice Roger Taney announced that the Court wanted to re-hear the case. Attorneys should pay special attention to two points: Did federal courts have jurisdiction? Was Scott a citizen?

Two weeks after Taney's announcement, pro-slavery raiders slaughtered "free state" homesteaders in Lawrence, Kansas. The next day, a pro-slavery Congressman beat up an abolitionist Senator on the Senate floor. Two days later, a "free state" raid left five pro-slavery settlers dead. That fall's presidential election — at heart a contest between the pro-slavery Democrats and the abolitionist Republicans — continued to inflame tempers. The Democrats' narrow victory settled nothing.

By December 15, when the Court began its second round, interest in Scott's case packed the chambers. Some papers carried the oral arguments word for word. As the Justices debated in private through January and February, so did the public and Congress. President James Buchanan mentioned the case in his inaugural address, saying he'd cheerfully submit to the Court's decision. An abolitionist paper replied:

> "You may cheerfully submit — of course you will — to whatever the five slaveholders and two or three doughfaces on the bench of the Supreme Court may be ready to utter on this subject; but not one man who really desires the triumph of Freedom over slavery in the Territories will do so. We may be constrained to obey as law whatever that tribunal shall put forth; but, happily, this is a country in which the People make both laws and judges . . . ."

Step 1. You edit either a pro-slavery newspaper in Richmond, Virginia or an abolitionist journal in Philadelphia. (Choose one.) It is March 6, 1857 and the sun set hours ago. Today, in the nation's capital a hundred miles away, the Supreme Court ruled on *Dred Scott v. John Sanford.* Your

TELEGRAM

COURT FINDS: SIX FOR SANFORD, TWO FOR SCOTT. CHIEF JUSTICE ROGER TANEY SPEAKS FOR MAJORITY. SAYS BLACK PEOPLE THOUGHT INFERIOR BEINGS WHEN CONSTITUTION WRITTEN. WRITERS DID NOT PRESUME BLACKS CITIZENS AND NO LAW HAS CHANGED THIS. SO NO BLACKS — FREE OR SLAVE — ARE U.S. CITIZENS. SO SCOTT CANNOT SUE IN FEDERAL COURT.

TANEY ALSO RULES ON QUESTION OF SCOTT'S FREEDOM — THOUGH NOT RELEVANT — BECAUSE NATION DEMANDS IT. SAYS CONGRESS CANNOT PROHIBIT SLAVERY IN TERRITORIES: VIOLATES AMENDMENT V, DEPRIVES SLAVE OWNERS WHO MOVE TO "FREE" TERRITORY OF PROPERTY — THEIR SLAVES — WITHOUT DUE PROCESS OF LAW. COMPROMISE OF 1820 WHICH MAKES TERRITORIES FREE IS NOT CONSTITUTIONAL. EACH STATE CAN FOLLOW OWN LAWS ABOUT STATUS OF SLAVES MOVED FROM FREE TO SLAVE AREAS. SINCE MISSOURI SUPREME COURT ACTED LAWFULLY IN *EMERSON V. SCOTT*, SCOTT IS SLAVE.

TWO JUSTICES — JOHN MCLEAN, BENJAMIN CURTIS — ISSUE STRONG DISSENT. BOTH SAY CONSTITUTION TELLS CONGRESS TO GOVERN TERRITORIES, GIVES THEM POWER TO REGULATE SLAVERY. COMPROMISE OF 1820 IS CONSTITUTIONAL.

MCLEAN SAYS CONSTITUTION DOES NOT DENY BLACKS CITIZENSHIP. ALL FREE MEN ARE CITIZENS, CAN USE FEDERAL COURTS. ALSO MISSOURI SUPREME COURT WRONG IN *EMERSON V. SCOTT*, IGNORED ALMOST 30 YEARS OF PRECEDENT. U.S. SUPREME COURT SHOULD OVERTURN INCONSISTENT JUDGMENT.

CURTIS GOES FURTHER. SAYS CONSTITUTION MAKES FREE BLACK MEN U.S. CITIZENS BECAUSE THEY ARE CITIZENS OF STATES IN WHICH BORN. CALLS TANEY'S AMENDMENT V STANCE NONSENSE: LAWS HAVE NEVER TREATED SLAVES THE SAME AS OTHER PROPERTY. SAYS LOWER FEDERAL COURT MISINSTRUCTED JURY IN MATTERS OF LAW. CASE SHOULD BE RETRIED.

readers are eager for news of the case and you can still make the next edition, if only your reporter in Washington will send word about what the Court has said. As you anxiously pace the pressroom, there's a knock on the door. A runner for the telegraph office grins as he hands you an envelope. You rip it open and read the report.

Step 2. You left enough space on the front page for a banner headline and a one-column article. Describe the Court's decision to your readers, explain your opinion of it and predict at least two ways it will affect the nation.

Epilogue

A few days after the *Dred Scott* decision, Dr. Chaffee, now a Republican Congressman, was excessively embarrassed when his hometown paper announced that he, rather than John Sanford, owned Dred Scott. Chaffee replied that his wife had left the Scotts on their own in St. Louis. He hadn't even known she owned slaves, much less the notorious Dred Scott, until a month before the Supreme Court decision. By then, there was nothing he could do.

He moved quickly to rectify the situation. Under Missouri law, only state citizens could free slaves. Chaffee transferred ownership of the Scotts to Taylor Blow, their long-time supporter. On May 26, 1857, in spite of the Supreme Court, Dred and Harriet, Eliza and Lizzy became free people. Three weeks earlier, John Sanford had died in an insane asylum.

The *Dred Scott* decision caused even moderates who opposed slavery to mistrust the federal courts. Radicals attacked the individual Justices for their opinions and the Court itself for its political bias. Many resolved to void the Court decision if at all possible.

The Northern reaction alarmed the South. According to Jefferson Davis, soon to lead the Confederacy, the North should have accepted *Dred Scott* as the final word on a disturbing controversy. When, instead, "Northern agitators" worked to overturn the ruling, Southerners became convinced that they would only find justice outside the Union.

Outwardly, the Scotts' lives continued much the same. Harriet worked as a washerwoman; Dred as a porter. Now famous, Dred got offers from promoters to tour as an exhibition. Harriet would have none of it. Dred Scott died in St. Louis of tuberculosis in September, 1858. Harriet died soon after. Only Lizzy, their youngest child, survived the Civil War.

1. Which, if any, of the results you predicted for the *Dred Scott* decision actually came to pass?
2. Did the legal system work for the Scotts? Was pursuing a federal case the right decision? Did the system work for Irene Emerson Chaffee? For John Sanford?
3. In the Scotts' case, did the legal process work in the nation's best interests? Why or why not?
4. Amendments XIII and XIV annulled the *Dred Scott* ruling. After reading them, explain why.
5. Was Dred Scott a hero or a victim? Explain your opinion.

Pinkerton detectives. (Allan Pinkerton's son, William, seated center.) *Courtesy of Pinkerton's, Inc. Archive.*

The Pinkerton Method

One day in the mid-1840s, a barrelmaker in Dundee, Illinois set off to look for lumber on a deserted island in the Fox River. As he searched the forest for likely trees, he noticed trails through the brush, signs of digging and a camp. It gave him a bad feeling. The cooper sped back to town for the sheriff and returned with a posse. The outlaws they captured had been flooding the area with bogus money. One forger escaped. The cooper tracked him down and, posing as an outlaw, caught the fellow red-handed. Allan Pinkerton clearly had a talent.

In 1850, after a stint as Chicago's first official detective, Pinkerton opened a private "police agency." Banks, railroads and express companies hired him to guard their property, watch employees and investigate crimes. When assigned a case, Pinkerton agents were supposed to identify the guilty party, collect enough evidence for conviction and then apprehend the criminal. They often used false identities to befriend suspects or infiltrate gangs. One agent, disguised as a ghost, haunted a murderer until he confessed.

Agents filed regular reports with the head office. At a time when photographs were few and fingerprint records almost unknown, these gave vital clues to outlaw identities. Pinkerton used them to start a rogues' gallery: a master file of suspects and convicts, listing their aliases, habits, haunts and friends.

Besides finding new ways to fight crime, Pinkerton laid down rules about agents' behavior. "The profession of the Detective is a high and honorable calling," he wrote. "He is an officer of justice and must himself be pure and above reproach." An 1867 handbook for Pinkerton operatives set these standards.

- Agents needed keen minds and a knowledge of human nature. They must be able to respond well in a crisis and, most important, maintain strict secrecy about their work.
- Detectives had to report everything about a suspect, good as well as bad, without bias. "The object of every investigation is to come at the whole truth."
- Reports must be based on facts. Agents had to verify all suspicions and label any gossip or hearsay used in their reports.
- Agents should not drink on the job or use liquor to loosen a criminal's tongue without their superior's approval.
- Agents should economize. "There is no occasion for them to resort to the higher class of Hotels, nor is there very much necessity for their riding in stages or omnibuses."
- At times, detectives had to lie or deceive people in order to solve a case. Their goal of promoting justice justified this behavior.
- After arrest, detectives should treat criminals kindly and fairly. Every effort should be made to help the outlaw mend his or her ways.
- Agents received a salary. They could not accept rewards.

Though his agents did not always live up to the rules, Pinkerton himself tried to. By reputation, he could not be bribed. Once he latched onto a case, he might track the culprit for years, if need be around the world. By 1870, the Pinkertons had earned a reputation as the country's greatest law enforcement agency.

1. As a member of the general public, would you add any rules to Pinkerton's list? Would you change any on the list? What rules would you want to change if you were one of his agents?
2. Pinkerton didn't think the police should hire detectives with criminal records or use criminals as stool pigeons. Do you agree? Why or why not?
3. When searching for a suspect, a Pinkerton agent might have nothing to go on but a general description. What technologies now help law enforcement identify and find suspects?
4. At first, Pinkerton called his force a National Police Agency. (The F.B.I. did not appear until 1907.) How might a privately owned police force benefit the public? How might it hurt society? Are private detective agencies a valid form of law enforcement?

The Detective

As police officer, F.B.I. agent or private eye, the detective is a favorite hero: clever, resourceful, courageous. Examine this legendary figure by watching a detective show on T.V.

Allan Pinkerton (seated, left), a secret agent for Union forces during the Civil War, 1862. *The Bettmann Archive, Inc.*

As you view each scene, take notes on the investigator's activities and behavior. What does he or she do? What rules must be followed? When, if ever, are they broken? Also note the scenes in which there is physical violence. After the show, in a written report, briefly describe the detective, at least two activities he or she took part in and at least two rules he or she was supposed to follow.

1. How many of the T.V. detectives broke Pinkerton's rules? What rules did they follow?
2. What activities did they take part in?
3. Is there a difference between how private and police detectives behave on T.V.? How do the rules they follow differ?
4. Were all the shows equally violent? In which, if any, cases did the violence seem justified? Why?
5. How realistic were the events on the show? What about the characters and their behavior? Find out by interviewing a police detective or private investigator. What does he or she do? What rules govern his or her behavior? How often does physical violence occur? What does he or she think of T.V. detectives?

Follow Through: Many police or sheriff's departments have ride-along programs to help citizens understand police work firsthand. If such a program exists in your community, arrange to have a team of students from your class take part. Collect questions for the officers from your class and answer them when you report back.

From the Files

In October, 1871, the Great Chicago Fire swept through the Pinkertons' head office. It destroyed a quarter million dollars of agency property, including the rogues' gallery, case files and Pinkerton's secret service records from the Civil War. Business dropped off. Then came the great depression of 1873.

The two controversial cases below date from this trying period. Read one case and put yourself in the agent's place. What would you do?

Case 1. The first bank robbery in the U.S. took place at 8 a.m. on February 3, 1866 in Liberty, Missouri. A gang of horsemen rampaged through town and left a 19-year-old bystander dead. The next 18 months brought three more robberies and three more deaths. Frightened bankers called in the Pinkertons, who found a dozen suspects, but no hard evidence. Rumor had it the raiders were guerillas, still fighting the Civil War.

A year passed and a Kentucky bank was robbed. This time an agent arrested one gunman and killed another, but the leaders got away. Another year and a half went by before the Pinkertons at last got lucky. While robbing a bank and killing a cashier in Gallatin, Missouri, the outlaws lost a horse. It was identified. It belonged to Frank and Jesse James.

Though the Pinkertons now knew who they were looking for, the James brothers proved impossible to find. Relatives and neighbors in Clay County, Missouri shielded the outlaws. After a bank or train robbery, the James gang would set out across Iowa or Kansas, with the Pinkertons in hot pursuit. But the trail always looped back to Clay County, where it always disappeared.

Inside Clay County, sheriffs were slow to help. Even if the James boys could be caught, local peace officers feared reprisal from the outlaws' friends and families. Two agents sent to infiltrate the county died in a shoot-out. A third agent blew his cover and was lynched. These deaths outraged Allan Pinkerton. "My blood was spilt," he wrote, "and they must repay. There is no use talking. They must die."

Finally, one undercover agent got a job on a farm near where Jesse's mother, Mrs. Samuel, lived. He heard a rumor that the James brothers were soon coming to spend a week or two with their mother. The Pinkertons quickly assembled a dozen agents at a secret command post. They borrowed a special railroad car so they could reach Mrs. Samuel's farmhouse without attracting attention.

Imagine you are the agent in charge of this force. On January 5, 1875, you receive word that Frank and Jesse have been seen going into their mother's house. What action would you take?

Case 2. Life in the Pennsylvania coal fields was rough, especially for Irish Catholics. They worked the worst jobs for the lowest pay. Like many immigrant groups, they formed protective societies to better their lot. In anger over the Civil War draft, a few of these societies took up arms. Sadly, the war's end did not halt the shooting sprees, feuds, payroll robberies and murders of English and Welsh mine officials. The scale of violence continued to fall and rise as the workers' plight in the boom and bust coal industry improved or grew worse.

Reading Railroad transported much Pennsylvanian coal and wanted to control the region's coal production as well. By raising freight rates, the company's president, Franklin B. Gowen, forced many independent mine owners to sell and crippled the miners' union. Wages fell; jobs disappeared. In 1873, Gowen turned to the Pinkertons for help controlling the violence.

In taverns and stores through the coal towns, muffled voices spoke of secret terrorist groups called the Molly Maguires. Gowen wanted a Pinkerton agent to infiltrate the Maguires and gather evidence against them. He also hoped to discredit the union by linking it to the outlaws. Disguised as a murderer on the lam, agent James McPharlan set off for the coal fields. Soon, he had not only joined the Maguires, but become one of their leaders.

McPharlan thwarted or delayed a few murder plots. His regular reports helped the railroad warn and protect marked employees. He heard several confessions and took part in meetings to plan murders. But none of his evidence resulted in an arrest. Pinkerton and Gowen wanted more information. They told him to stay on the job and protect his cover.

In late August, 1875, a Maguire group met to plan several attacks. At the meeting, McPharlan was told to arrange the murder of John P. Jones, a mine boss who had blacklisted one of the group. This time stalling didn't work. When he finally contacted the assassin, he learned that the murder had been planned without him. Jones would be shot in three days, not enough time to use the regular channels to warn the victim. If you were Agent McPharlan, what would you do?

Jesse James, age 17. *Courtesy of Western History Collections, University of Oklahoma Library.*

Step 1. Read the case you've been assigned. Before deciding what action to take, pair off with another student and discuss these questions.

a. What are your goals? (What are you trying to accomplish?)

b. What choices do you have? How many different actions might you take?

c. What are the consequences of these actions? Who will they affect?

d. Who are you responsible to? Who will judge your actions?

Step 2. Working with your partner, decide what to do. Be prepared to state and explain your decision.

For Discussion

1. The Civil War affected both cases. How?
2. In each case, why do you think the victimized companies hired the Pinkertons rather than turning to the sheriff or police?
3. You've heard the results of the Pinkerton agents' actions. What results might the actions you suggested have had?
4. Mrs. Samuel had been harboring a known criminal. Should she and her family have been prepared to take the consequences of that action? What would you have done in her position?
5. During the Molly Maguires' era, American law acknowledged a business owner's vested interest in his property, but gave a job holder no right to his or her job. Was violence the Maguires' only option? How else might they have redressed their grievances?
6. Did Pinkerton agents obey the rules during these cases? What, if any, rules about agents' behavior would you add to Pinkerton's list?
7. If private detectives acted in similar ways today, how do you think the public would respond? Would you approve of the police in your community taking similar action?

Follow Through: The James gang, the Molly Maguires and the Pinkertons are all mentioned in folksongs. Find examples and examine how these groups are portrayed. Include recordings of the songs in an oral report on your research. With the class, discuss why the criminals may have become heroes and to what extent, if any, folksongs are history.

Liberties and Law Enforcement

Step 1. In the U.S., officials who enforce the law are also expected to obey it. The Bill of Rights, and court interpretations of it, provide some ground rules for officers. Read the Constitution's first 10 amendments. In what ways, if any, might the freedoms and protections guaranteed in them affect law enforcement? Which limit or enhance officers' powers? Which might impact their jobs?

Step 2. With your group, choose the two amendments you think have the greatest impact on law enforcement. Prepare to justify your choices to the class.

For Discussion

1. How does the Bill of Rights protect criminal suspects? Those indicted for crimes? Those convicted? How do these provisions protect law-abiding citizens?
2. The Bill of Rights applies to the acts of government officials and agents or private citizens acting at the government's request. Should it also be applied to private law enforcement agents? Why or why not?
3. In our history, law enforcement officers have been used to limit freedoms. They might halt a demonstration which officials think will harm public safety. They have also been used to protect rights, for instance, to enforce desegregation. Are these an appropriate use of the police? Why or why not?
4. If an officer breaks a law in the line of duty, should he or she be subject to the same penalties as anyone else?
5. Like all parts of the Constitution, the Bill of Rights provisions affecting law enforcement are subject to continual interpretation by the Supreme Court. What changes in American society might cause the Court to re-examine these provisions?

Follow Through: One Supreme Court interpretation with major impact on law enforcement is the exclusionary rule. In effect, the Court has said that if officers don't follow the rules when collecting evidence, the evidence can't be used in court. The Court applied this rule to a federal trial in 1886 in *Boyd v. U.S.* Twenty-five years ago, in *Mapp v. Ohio*, it extended coverage to proceedings in state courts. With a team of students, research the arguments for and against this controversial rule. Then conduct a debate for the class on whether the Court should continue to enforce it.

Tombstone

The ancient and honorable position of sheriff dates back to Anglo-Saxon England. The king appointed an officer, a reeve, to keep peace and order in each English county, or shire. Shire-reeves looked into crimes, caught outlaws and often collected taxes. Given such power, some men behaved justly. The Robin Hood legend names the Sheriff of Nottingham as one of many who did not.

By the 1300s, towns were hiring their own watchmen and justices of the peace. The watchman, often called a constable, kept order and warned of emergencies within the city limits. The justice of the peace administered minor laws. Most law enforcement, though, came from peer pressure. Group life created strong reasons to conform and obey. Everyone knew what everyone else was doing. Strangers were easy to spot and closely watched. When a crime occurred, the sheriff or town watchman set up "the hue and cry" or invoked *posse comitatus* (the power of the county). All able-bodied men then had to join the hunt for the offender.

Almost 600 years later, although America's growing cities could no longer function under this kind of law enforcement, the ancient system still held sway in the country's small towns. In 1880, most communities west of the Mississippi turned to the sheriff, the constable, the justice of the peace and the posse for official law and order.

Enforcing the law in the West involved special problems. People moved around a lot: peer pressure doesn't work when everyone's a stranger. Armed citizens and regular violence were needed to take and hold native American land. The region drew crowds of the "crime prone" (men aged 15 to 24 who see themselves as loners or outcasts). The newcomers who made fortunes provided ready targets for those who did not.

Take the situation in Tombstone, Arizona. In 1880, the town was less than two years old and already home to several

The Oriental Saloon at Tombstone, Arizona. *Arizona Historical Society/Tucson.*

thousand people. Silver caused this growth. Few of the area's claims were worth more than a few hundred dollars. Yet a half dozen were very rich. Prospectors had arrived, then professional miners, assayers, engineers and, with them, the big mining companies. Businesses sprang up to offer food, baths, laundry, gambling, prostitution.

Though straying miners sometimes fell to the Apaches, the influx of people made the range much safer. Cattle ranchers soon joined the Tombstone throng. Though sparse, the grazing proved good, and the mines provided many mouths to feed. In addition, they brought the railroads and opened a national market for beef from the Southwest.

Along with the cattle barons came the rustlers. Instead of buying herds, some ranchers stole cows from nearby Mexico. No one much objected until local cattle began to disappear. Foremost among the many ranchers suspected of rustling were Old Man Clanton, his sons and the McLaury brothers. Frequent visits from two infamous gunmen — Curly Bill Brocius and Johnny Ringo — didn't help the families' reputations.

But, then, Tombstone itself wasn't exactly law-abiding. Swindling, smuggling and claim jumping were common. So were assault and murder. There is no record of how many people died violently in Tombstone and its suburbs during the early 1880s. "Men killed, shot, stabbed, suiciding — every day or two," one miner recorded in his journal. "Tombstone is getting a pretty hard name."

Look at the causes of death:

- Bradshaw teased his partner Waters about wearing a gaudy shirt. Waters slugged Bradshaw. Bradshaw killed Waters.
- Little Gertie, "the Gold Dollar," stabbed Marguerita in a fight for the attention of Billy Milgreen.
- Prairie Jack decided to run three Irishmen out of town. He found one, Paddy O'Day, in a store, stuck a rifle in his ribs and told him to leave town or else. O'Day grabbed the rifle. Prairie Jack was found outside the store a few minutes later with his head bashed in.
- Billy Claiborne shot Jim Hickey because Hickey was following him around and insisted on buying him a beer.

Some said Tombstone had no law but miners' law. However, as part of Pima County in the Arizona Territory, the town fell under the jurisdiction of both the county sheriff and the U.S. marshal. Frustrated with these distant agencies, residents had chosen a constable, or town marshal, named Fred White.

Lawman Wyatt Earp, aged 31, arrived in Tombstone in December, 1879. His brothers — Virgil (a deputy U.S. marshal), Morgan, Jim and Baxter — soon followed. So did friends Bat Masterson (once sheriff in Dodge City) and Doc Holliday. Wyatt invested in real estate, mining and a saloon. He and brother Morgan got jobs riding shotgun for Wells, Fargo & Co. The Earps also worked as part-time posse deputies for the U.S. Marshal and helped the Army track some stolen mules. (These turned up at the McLaury ranch.)

Nine months after the Earps arrived, the Pima County Sheriff chose Wyatt as his deputy for Tombstone. One night in late October, some rowdy cowboys refused to obey a town law and check in their guns. Town Marshal White asked Deputy Sheriff Earp to help disarm them. While taking a gun from Curly Bill Brocius, White was shot in the stomach. After knocking Curly Bill out, Earp pistol-whipped and jailed the Clantons and McLaurys. Before he died, White said the gun had gone off by accident. Though Earp did not agree, the cowboys went free.

Meanwhile, Tombstone business and property owners found out that Pima County had given them a deputy sheriff primarily to collect taxes. His job now quite unpopular, Wyatt resigned as deputy sheriff and joined a political move to oust his former boss. The campaign failed, but soon after, Tombstone broke away from Pima County to form its own county, Cochise.

Wyatt quickly applied for the new job of Cochise County's sheriff. His main competitor was Johnnie Behan, the man who had replaced him as deputy sheriff. Influenced by the Pima County politicians to whom Behan had proved loyal, the territorial governor gave Behan the job.

Like his brother, Virgil Earp sought a local law enforcement position. He ran for town marshal in Tombstone's next election and lost. During the same vote, the town chose John P. Clum, owner of a leading paper, *The Epitaph*, as mayor. Clum mistrusted county officials and liked the Earps. When the elected marshal left town one day early in the summer of 1881 and never returned, Virgil was sworn as his replacement.

1. Do any of the Tombstone killings described in the text seem justified? Why or why not?
2. If you were Tombstone's marshal, what steps would you have taken to promote law and order?
3. A peace officer's jurisdiction is both the laws (federal, state or local) he or she may enforce and the area (town, county or state) of his or her authority. What law enforcement positions did the Earp brothers hold while in Tombstone? What were their jurisdictions?
4. Imagine you are a mine owner in Tombstone. What law enforcement would you call in to deal with the following problems? Why?
   - A shipment of silver worth $6,000 is hijacked.
   - One of your laborers is killed in a knife fight on mine property.
   - Money to meet your payroll is brought in from Tucson on the stage. So far, you haven't been robbed, but stage holdups are increasing.
   - Your workers threaten to go on strike and shut down the mine.
5. How did politics influence the selection of law enforcement officers in Tombstone? In general, do you think peace officers should be elected or appointed?
6. *The Epitaph* represented Tombstone's growing business and property-owning interests, the group which took control of the town at Mayor Clum's election. Another major paper, *The Nugget*, represented an opposing faction. What groups of people do you think belonged to that faction?

The Gunfight in the Vacant Lot Near the O.K. Corral

Tensions between the Earps and the cowboys, between the town and county governments led to the most famous gunfight in U.S. history. It took place mid-afternoon on October 26, 1881, in the vacant lot between Fly's photographic studio and a smaller house, a good block from the O.K. Stable, but backed by part of the corral yard. It lasted about 30 seconds. It left Morgan and Virgil Earp wounded and Tom and Frank McLaury and Billy Clanton dead.

What caused that battle? What happened in it? Who did what to whom? Both sides told, and their adherents still tell, different stories. Read one, *and only one*, of the two versions — "The Lawmen" or "The Cowboys" — below.*

Wyatt Earp, 1886. *The Bettmann Archive, Inc.*

The Lawmen

On March 15, 1881, some masked men robbed the stage from Benson and killed its driver, Budd Philpot. The Earps, Bat Masterson and a large posse found a suspect who named three accomplices. Wyatt's good friend, Doc Holliday, knew one of the men. When Doc broke up with his girlfriend, Sheriff Behan got her drunk and talked her into accusing Doc of the murder. Behan gleefully arrested Doc. But Wyatt begged the woman to tell the truth. She had a change of heart and Doc was released.

Wyatt thought that catching the three robbers might help him win an upcoming election for sheriff. As a deputy U.S. marshal, he asked Wells, Fargo to post a large reward. Then he paid a call on two men he knew were friends of the robbers: Ike Clanton and Frank McLaury. He offered Ike and Frank the entire reward if they'd lead him to the robbers. After making sure the money would be paid "dead or alive," the cowboys began plotting to lure their three friends back to Tombstone. However, fate intervened and the stage robbers met violent deaths elsewhere.

Still, the incident proved some of Wyatt's hunches. He had known, as soon as he got to Tombstone, that the Clantons and McLaurys were the bad guys. Several petty skirmishes with the cowboys suggested a much bigger problem. The Earps believed that Ike's father, Old Man Clanton, headed a mob of horse thieves, rustlers and robbers. Further, these criminals worked hand-in-hand with the county and territorial governments. They bought protection and took their orders from powerful men in high places, among them Sheriff Behan.

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*Quotes in both stories are taken from trial testimony reprinted in the Tombstone *Epitaph*, October 30 through December 1, 1881.

Soon, events confirmed these suspicions as well. In the summer of 1881, Old Man Clanton was killed by the Mexican cattlemen from whom he'd been stealing. Then, early in September, a Cochise County Deputy Sheriff named Frank Stilwell robbed the Bisbee stage. Though Stilwell's arrest cleared up most of the county's stage robberies, Frank McLaury didn't see it as a public service. He blamed the Earps and swore he would kill Morgan.

Death threats from the cowboys increased over the next weeks. Late one night, after trying to pick a fight with Doc Holliday, Ike Clanton approached Wyatt in the Oriental Saloon. Ike warned "that this fighting talk had been going on for a long time and it was about time to fetch it to a close," explained Wyatt. "I told him I wouldn't fight no one if I could get away from it. He walked off and left me, saying 'I'll be ready for all of you in the morning.'"

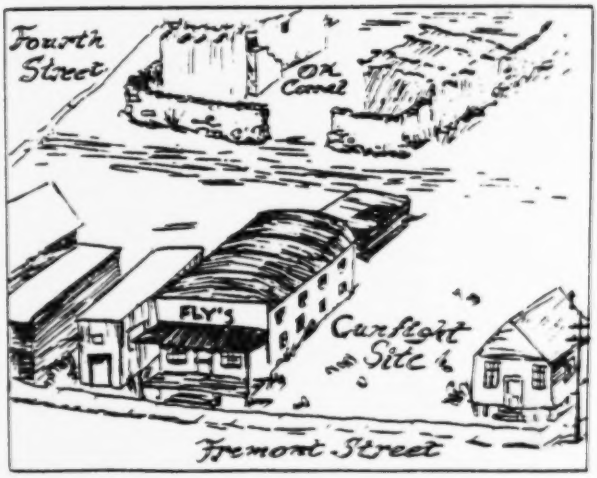
When he got up about noon the next day, October 26, Wyatt heard that Ike was in the street, fully armed and looking for a fight. The lawman warned his brother Virgil who, as town marshal, took away Ike's guns and hauled him off to court. Even there, Ike continued hurling threats and Wyatt finally lost his temper. He swore at the cowboy and, storming off, lashed out at Tom McLaury who was waiting outside.

A short while later, Wyatt saw Ike's brother Billy and the two McLaurys loading up on cartridges at the gunsmith's. Again, he reported to Virgil. As they stood on the corner discussing the situation with Morgan and Doc, several passers-by stopped to warn them of trouble. Having deputized his brothers a few weeks before, Virgil now asked their help. The Earps and Doc headed down Fourth Street for the O.K. Corral where the cowboys were said to be plotting.

As the Earps turned onto Fremont Street and caught sight of the cowboys, a frightened Sheriff Behan walked toward them. "For God's sake," he told Virgil, "don't go down there or you will be murdered." Unshaken, Virgil replied that he was going to disarm the outlaws. "I have disarmed them," Behan muttered to Wyatt as he ran away.

Drawing closer, Wyatt counted his opponents: Ike and Billy Clanton, Tom and Frank McLaury, Billy Claiborne, young but quick, and a sixth man, a stranger. "Throw up your hands," ordered Virgil, squaring off. "I have come to disarm you." Billy and Frank reached for their six-shooters. "Hold! I don't mean that," said Virgil. "I have come to disarm you." As Billy and Frank drew their guns, Tom threw his hand to his hip and ducked behind a horse. Billy fired and missed. At the same time, Wyatt fired at Frank, the best shot in the bunch, and hit him in the belly. The fight then became more general.

Wyatt thought the cowboys were planning to murder him. "I believe I would have been legally and morally justifiable in shooting any of them on sight," said Wyatt, "but I did not do so." Instead, as a deputy acting under the town marshal's orders, he tried to preserve the peace. "When Billy Clanton and Frank McLaury drew their pistols, I knew it was a fight for life and I drew and fired in defense of my own life and the lives of my brothers and Doc Holliday."



Artist's rendering of gunfight site. *Kathleen Brennan.*

The Cowboys

On March 15, 1881, some masked men robbed the stage from Benson and killed its driver, Budd Philpot. A large posse led by Sheriff Behan caught a suspect who named three confederates, one of them a close friend of Doc Holliday. Further investigation turned up witnesses, including a respected cattle baron and a man stringing telegraph wire, who claimed they saw Holliday himself streaking away from the scene of the crime. Holliday's girlfriend cinched the case by swearing that Doc told her he shot Philpot.

Doc was arrested. But his best friend, Wyatt Earp, convinced the woman to change her story. But, with Doc's release, justice went awry. Holliday later admitted his guilt to Ike Clanton.

Ike and his friend Frank McLaury soon received a visit from Wyatt Earp. Though the stage robbery case was none of his business, Wyatt offered the two cowboys a $3,000 reward if they'd lead him to the three men wanted for the crime. The offer made Ike and Frank uneasy. Wyatt had been known to use a lawman's badge for his own purposes. While on the Wichita police, he kept many of the "fines" he collected and was fired for beating up a political rival. He'd also been caught swindling in Texas. Maybe now Wyatt was trying to kill Doc's accomplices so they couldn't tell tales. Though they didn't much care for the robbers, the cowboys turned Wyatt down.

Doc's confession and Wyatt's behavior convinced Ike that the Earps, aided by a crooked Wells, Fargo agent, were robbing stages. Worse, they were using Virgil Earp's position as town marshal to cover their crimes and lock up or gun down their competition. The gang's vicious attitude toward Sheriff Behan, the county's real law enforcement, seemed further proof.

Ike's worry over who the gunslingers would go after next turned to alarm when Doc began to taunt him for squealing on his friends. Wyatt, it seemed, had been telling people that Ike sold out the stage robbers. If a story like that got back to the gunmen and rustlers at his ranch, Ike's life wasn't worth a plug nickel.

Late one night in October, Ike was sitting, unarmed, at a lunch counter when Doc appeared, drunk and swearing. He called Ike a liar, said Ike had threatened the Earps and told him to go for his gun. As he denied Doc's charges, Ike glanced backwards and saw Morgan Earp, hand on gun pocket, behind him. "I walked off," said Ike, "and asked Morgan Earp not to shoot me in the back." Half an hour later, Ike started a game of poker with Virgil Earp, Frank's brother Tom and Sheriff Behan. They played till dawn.

About one the next afternoon, October 26, Virgil and Morgan sneaked up on Ike, knocked him over the head and hauled him to court for carrying weapons in town. As Ike stood before the bench, Wyatt came in. "He called me a thief and a son of a b---," said Ike, "and told me to name my style of fighting and when and where and that he could outwhip me or outshoot me." Shoving a rifle toward the prisoner, Wyatt moved for his own gun. When Ike did not respond, Wyatt stormed from the room and pistol-whipped Tom McLaury who was waiting outside for his friend's release.

An hour or two later, as Ike, his brother Billy, Tom, Frank and a friend named Claiborne were talking matters over in a vacant lot, Sheriff Behan walked up and told them to disarm. Billy replied that he was leaving town at once. Ike and Tom said they had no weapons. Only Frank argued. The Earps had just attacked his brother and he wouldn't give up his guns until they gave up theirs. As Behan insisted, he frisked Ike and turned to frisk Tom. Just then, Wyatt, Virgil, Morgan and Doc turned the corner at the end of the street.

Telling the cowboys to stay put, Behan approached the Earps. He assured them he was disarming the Clantons and ordered them to stop. They brushed right by him, heading for the vacant lot. There, with drawn guns, they told the cowboys to surrender. When the Clantons and McLaurys threw up their hands, the Earps opened fire. Doc and Morgan shot first, hitting Billy. Ike grappled with Wyatt, the lawman's pistol in his belly, but broke free. Bullets whizzing past him, Ike ran for his life. The Earps had already fired four or five shots; the cowboys hadn't yet drawn a weapon.

Step 1. Whichever version you read, the following people played major roles in the story. For each, write one sentence explaining who he was.

Wyatt Earp	Ike Clanton
Johnnie Behan	Doc Holliday
Frank McLaury	Virgil Earp

Step 2. Whose fault was the gunfight? During a civil trial (though not a criminal trial), the jury can be asked to decide how responsible each side is for an event. For instance, in an auto collision, the jury might decide that one driver was going too fast and is 30% responsible. But the other driver entered the intersection after the light turned red and, so, is 70% responsible. Based on the story you read, how responsible were the lawmen and the cowboys for the gunfight deaths? Assign a percentage of responsibility (0 to 100%) to each side.

Step 3. Meet with your assigned group and try to reach agreement about the extent to which each side was responsible. Use these questions to guide your discussion.

a. What percentages did each group member assign? Why?
b. On what information is each opinion based?
c. Which, if any, of the events leading up to the gunfight help justify the participants' behavior?
d. Are any one character's statements more reliable than the others? Why or why not?
e. How would you divide responsibility if you found out that your version of the story was false and the other version true?
f. What additional information would help your group make this decision?

Step 4. Prepare to present your group's decision and the reasoning behind it to the class. If you couldn't reach agreement, prepare to explain why.

For Discussion

1. Review the percentages you assigned before the group meeting. Has your personal view of the gunfight changed? Has the class response changed? If so, how and why?

2. Imagine you were on the scene immediately after the gunfight. What steps would you take to find out what really happened? What questions would you ask? Of whom? What physical evidence might help determine the truth?

3. Most of Sheriff Behan's statements supported the cowboys' version of the story. Does this make the cowboys more credible? Why or why not?

4. Fred Dodge, Wells, Fargo's undercover detective in the area, was a friend of the Earps. In 1930, he wrote that a Wells, Fargo agent was in league with a gang of stage robbers to which Doc Holliday belonged. He also hinted that Doc had murdered the driver, Philpot. Do you believe Dodge's statement? Does it help clear up what happened at the gunfight?

5. Is information about the Clantons' rustling activities relevant to the gunfight? Why or why not?

6. In 1929, Mayor Clum wrote:

   "There has been much discussion as to who fired the first shot in this street battle. The question is utterly unimportant to me, though I believe that the rustlers shot first . . . . I do not think that an officer of the law should offer himself as a target for the bullets of every thug and bandit and desperado he may be called upon to apprehend, and to wait until the criminal has missed him a couple of times — or has mortally wounded him — before he joins in the shooting."

   In general, do you agree with Clum's statement? Do you think the Earps were acting as "officers of the law" during the gunfight?

All's Well That Ends Well

There's still little agreement about what really happened next door to Fly's photographic studio on that October afternoon. Bystanders soon flooded the lot, destroying most physical evidence. A coroner's jury said only that the three cowboys had died of gunshot wounds inflicted by Doc and the

Earps. To clear the air, Wyatt asked for a trial, or so his supporters say. At any rate, three days after the battle, Virgil was fired and Wyatt and Doc were arrested for murder.

At the preliminary hearing, the justice of the peace barred the public and limited press coverage. In one view, he wanted to keep Clanton's friends from storming his courtroom. In the other, as part of Clum's administration, he wanted to whitewash the Earps. Available records indicate that, excluding the participants, four witnesses said the cowboys had their hands up when shot; three said they did not.

Historians still argue about another piece of evidence. Earp supporters point out that a bullet entered the back of Billy Clanton's wrist. His hands couldn't have been raised. Cowboy supporters suggest that Clanton dropped his hands when he was shot in the stomach and, then, received the wrist wound.

On December 1, the justice of the peace exonerated Wyatt and Doc with a ruling of justifiable homicide. The Earps had behaved as good law enforcement officers must. *The Epitaph* praised and applauded; *The Nugget* screamed for vengeance. The grand jury, which could have reopened the case, did not, but Tombstone remained divided.

1. Describe the legal steps Tombstone used to resolve the Clanton-McLaury deaths.
2. In the gunfight at the O.K. Corral, do you think the end justified the means? Why or why not?
3. The purpose of law enforcement, according to one department's motto, is "to protect and serve." In Tombstone, beset with competing interests, the town marshal chose to protect and serve one side; the county sheriff, the other. When interests conflict, what criteria should a peace officer use in deciding which to support?
4. Historical evidence about the gunfight and events leading up to it supports both sides. Yet the popular view of the battle is primarily pro-Earp. Why do you think this is so?

Follow Through: Dozens of movies have been made about the gunfight at the O.K. Corral. After viewing one, compare its plot with the facts presented in the text. Which incidents were changed? Why might they have been changed? What further research, from what sources, might help resolve discrepancies?

Officers of the Law

Step 1. Today, U.S. federal, state and local governments have dozens of employees and agencies to detect and investigate crime and enforce the law. With your class, identify as many as you can.

Step 2. Choose one of the jobs and answer these questions:

a. What's the formal job description? What duties does the job entail?
b. What is the job's jurisdiction? Over what crimes in what territory does the agent have authority?
c. Which branch of government — executive, legislative or judicial — controls the officer?
d. What are the employment qualifications?
e. How are job holders recruited, selected and trained?
f. How much does the job pay? (In salary and benefits)
g. What does someone who holds such a job most like and most dislike about the position?

Follow Through: By the 1920s, local law enforcement throughout most of the U.S. had developed into professional police departments. What forms did it take in your community? Research your town or city's history and find out the names and dates of office of the first sheriff and town marshal or constable. Also find out when your police force was formed. Are there any legends about these peace officers? About posses they led or crimes they solved? If possible, include photographs and oral history in the presentation of your findings.

After the gunfight: Tom and Frank McLaury and Billy Clanton. *Courtesy of Western History Collections, University of Oklahoma Library.*

Quanah Parker, 1891. *Library of Congress.*

The Last Comanche Chief

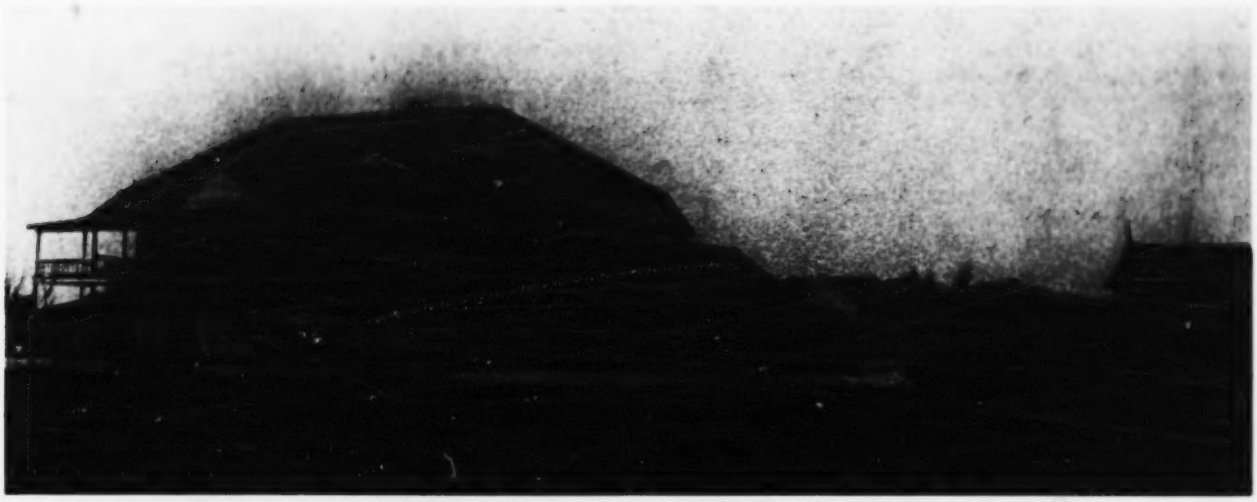
When the buffalo died, the Comanche came in off the plains. The Army had had little luck in its 35-year battle to pacify these nomad hunters. Then, white hunters moved onto Comanche land. Their rifles, equipped with new telescopic sights, could kill a buffalo at 600 yards. The Comanche might have fought to the last warrior, but they saw no valor in starving to the last child. Late in the spring of 1875, Wild Horse, Black Beard and Quanah, war chiefs of the Quahada Comanche, led their band of 400 to Fort Sill (now in southwestern Oklahoma) and surrendered.

Congress had a plan for pacified native Americans: Give them land and they would soon become law-abiding, preferably Christian family farmers, with little need for government help. Accordingly, the Quahada joined other Comanche, Kiowa and Kiowa-Apache on a three-million-acre reserve near Fort Sill. Unlike some native leaders, the Quahada war chiefs were not sent to jail. Their presence on the reserve proved to be a good thing, because the government's plan failed.

The reservation lands were suffering through a bad drought. Growing food would have challenged experienced, well-equipped farmers. The Comanche had neither knowledge of farming nor proper tools. Promised food rations did not appear and federal help kept going awry. The Comanche abandoned model homes, built to coax them from their tents and nomad lives, because the poorly designed shacks filled with smoke when heated. They saw no use for the herds of sheep they were told to raise and the animals died of neglect.

Federal Indian Agents, in effect governors assigned to hand out rations, control finances and trade and enforce policies set by the Office of Indian Affairs, often proved ineffective. Many of those sent to the Comanche reserve wanted, most of all, to "civilize" the "culturally inferior" native Americans. Some used tyrannical means to achieve that goal. No one seemed to understand that the Comanche were hunters, not farmers or herders, no one but the Comanche themselves.

Knowing it might take his people years to adapt to the white world, one of the Quahada war chiefs decided to meet a more immediate need: money. The chief, Quanah, had noticed that each year, Texas cattle ranchers driving their herds north to Abilene and Dodge City trespassed on reservation land. Instead of chasing them off, suggested Quanah,



Quanah Parker's home at Cache, Oklahoma. *Courtesy of Archives and Manuscripts Division of the Oklahoma Historical Society.*

Quanah's most serious conflict with whites involved his family: He had seven wives. When his polygamy became public knowledge, outraged officials demanded that he choose one wife or be stripped of his positions. Quanah joked about the difficulties of such a choice but did not consider making it. The stance soon cost him his job as judge. However, rail as they might, authorities could not oust him as chief. As one Indian Agent reported:

> "If ever Nature stamped a man with the seal of headship, she did it in his case. Quanah would have been a leader and a governor in any circle where fate may have cast him — it is in his blood."

By the turn of the century, Quanah Parker was one of the most famous native Americans alive. A town in Texas had been named after him, as had a railroad. He rode in Theodore Roosevelt's inaugural parade. When he died in 1911, the federal government acknowledged the reservation's Business Council, a group Quanah founded to promote economic growth, as the tribal leadership. As a mark of respect, the government refused to recognize a new Comanche chief.

1. Why did the federal government put the Comanche and other native Americans on reservations? What other options might Congress have pursued?
2. In what ways did Quanah lead his people? What actions did he take?
3. "Quanah was much opposed to the white man's way," said one of his sons after the chief's death. "[He] kept his tribe from adopting civilization and the Christian religion." In what ways is this statement true? What evidence contradicts it?
4. By what authority was Quanah a leader?
5. The federal government recognized Quanah as "principal chief" of the Comanche. Did the government have the right to decide whether there would be another chief after Quanah's death? Why or why not?
6. At Quanah's birth, about 20,000 Comanches controlled a range of almost a quarter million square miles. They lived as free nomads. When Quanah died, 1,200 remaining Comanches lived amidst white culture and counted their range in acres. What special problems might a leader face during an era of such vast change?

Follow Through: How much land do the Comanche, Kiowa and Kiowa-Apache presently hold? Investigate and prepare a series of maps showing the tribes' holdings in the early 1800s, 1880, 1900, 1940 and today. Identify five major questions your maps raise about relations between the Comanche and the federal government. Discuss these questions when you present your maps to the class.

Judgment Day

It is 1957, almost half a century after Quanah Parker's death. U.S. armed forces need the land in which the chief is buried for a guided missile project. You are one of several high-ranking federal officials who coordinate military and domestic programs. Your staff suggests that the government rebury Quanah and his mother (whose body he had moved from Texas) in the post cemetery at Fort Sill. They further propose that Quanah be interred with full military honors.

Step 1. Meet with other liaison officials and discuss these questions:

- **a.** Why might honoring Quanah Parker with burial at Fort Sill be appropriate?
- **b.** Why might it not be appropriate?
- **c.** Military funerals are usually reserved for those who served the armed forces. Should Quanah be given a military ceremony?
- **d.** How might Quanah's descendants react to a reburial? How might the Comanche and Kiowa respond? The reservation's Business Council? The Indian Agency? Descendants of soldiers who fought Quanah during the wars?
- **e.** Should the government pay to reinter Quanah and Cynthia Ann Parker? Why or why not?

Step 2. Based on your discussion, decide whether you should accept your staff's full proposal, modify it in some way or reject it. Appoint a spokesperson to explain your decision to the class.

For Discussion

1. What skills or abilities made Quanah a good leader? What important leadership skills did he lack? Brainstorm a list of the skills you think a leader needs.
2. Like Quanah, many political leaders come from military backgrounds. What skills or experience needed by a leader might such a background provide? What other kind of backgrounds provide leaders with appropriate training?
3. What personal qualities should a leader have? What background or experiences would promote these qualities?
4. In general, what are the three most important duties or responsibilities of a political leader? Explain your choices.
5. In judging Quanah, did you apply realistic standards? Do you think people expect too much from political leaders? Should people demand more from their leaders than they do from themselves?

Follow Through: Many native American leaders decided not to cooperate with whites. Research the biography of such a leader and, in an oral or written report, compare his or her life to Quanah's. In what ways did each succeed? Why might the two have made different choices? Which was the better leader? Why?

Follow the Leader

If leaders set policy and decide what to do, for what are followers responsible? Can people turn the full burden of the decisions of government over to their leaders? Reflecting on Germany's tragic experience in World War II, former Secretary of State Alexander Haig recently urged people of all nations to watch their governments closely and take prompt action if leaders break the law or become repressive. On a less epic scale, consider these cases:

- The supervisor at a small factory doesn't know how to get rid of toxic waste products. He tells workers to dump the chemicals down the drain.
- During war, a commanding officer decides the civilians in a certain village are helping the enemy. He orders his men to kill them.
- A school board compiles a list of books it finds unsuitable for young readers and orders school librarians to pull them from the shelves.
- A governor orders all state employees to submit to random urine tests for drug use.
- During peacetime, a president prohibits staff from discussing the details of a military operation with the press, claiming that publicity would violate national security.

1. In each case, has the leader overstepped his or her authority? Has the leader told followers to do something wrong?
2. If the followers obey, who is responsible for the consequences, the leader or the followers?
3. Should the followers obey? Why or why not? If you were a follower in this situation, what would you do?
4. As a member of the general public, if you heard of such orders being issued, how would you respond? Would you be in any way responsible for the action or its consequences?
5. In general, what are the duties of a follower? To what extent should people second-guess their leaders' orders and decisions?

Elected Leaders

Leaders do not work in a vacuum. They must interact with constituents and other leaders, with supporters and opponents, and yet keep the respect needed to fulfill their role. In a democracy, where political leaders are chosen by popular vote and their actions may be widely reported, maintaining command can prove difficult. Case studies of two leaders who held office during Quanah Parker's lifetime are presented below. Both readings focus on decisions the leaders made while in office.

The Forgotten Eagle

John Peter Altgeld (1847-1902) became Governor of Illinois in 1892, the first Democrat to win that office since the Civil War. A German immigrant, his father poor and unschooled, Altgeld had started out as a day laborer. He then taught school, studied law and served as a public prosecutor. His experiences made him deeply committed to civil liberties, workers' rights and help for the poor. During the 1870s, Democratic Party leaders in Chicago noticed Altgeld's work for prison reform. With their help, he was elected to the county superior court. When he left the bench to run for governor, he was Chief Justice and had made a fortune in real estate.

One of Altgeld's first official acts involved an event that had taken place six years before. On May 4, 1886, roughly 1,000 people had gathered at Chicago's Haymarket Square to protest the deaths of two strikers recently killed by police. About 8 p.m., though the meeting seemed peaceful, a police officer ordered his men to break it up. As columns of police marched forward, someone threw a bomb in their midst. Eight policemen and one civilian died in the ensuing riot; 67 other officers were wounded.

To this day, no one knows who threw the bomb or whether police fell from the bullets of armed civilians or those of their own panicked colleagues. Even so, the public blamed labor leaders, socialists and anarchists for the violence. Authorities arrested scores of radicals. Eventually, eight men,

three of whom had spoken at the meeting, were tried for "constructive conspiracy": Their speeches and writings, it was argued, had incited the bombing. All were quickly convicted. When the state Supreme Court upheld the verdict, four were hanged. A fifth blew himself up in jail.

Altgeld had watched the case unfold with concern. Now, as governor, he conducted his own investigation. The results convinced him that the jury had been packed, the judge behaved unfairly and the defendants' guilt was not legally proved. Though advised against it, Altgeld pardoned the three remaining Haymarket convicts. This was not an act of mercy, he explained. If guilty, the men deserved none. It was an act of justice. As his advisors had predicted, most of the press and public disagreed.

John Altgeld (seated, left) in conference, 1896. *The Bettmann Archive, Inc.*

Soon after he took office, Altgeld suffered financial losses. He borrowed large sums from State Treasurer Rufus Ramsey, a banker and personal friend. In late 1894, Ramsey died. An audit showed that, instead of loaning people his bank's money, Ramsey had been lending state funds: $300,000 was missing. Worse, $50,000 worth of the governor's IOUs were sitting in the state vault. If the new treasurer found those notes, the scandal could destroy Altgeld, his party and the causes for which he worked so hard. Though, by law, only the new treasurer could unseal the state vault, Altgeld opened it to replace the IOU notes with cash.

Having served but one term, Altgeld lost his office in the 1896 election. Though many Democrats still wanted to run him for president, Altgeld had been born outside the U.S. and was not eligible. After his sudden death in 1902, the man himself was largely ignored. Yet his vision, goals and issues have shaped the Democratic Party for almost a century. In a tribute to Altgeld, the poet Vachel Lindsay consoles the "eagle forgotten" with this thought: "To live in mankind is far more than to live in a name."

The Rough Rider

Theodore Roosevelt (1858-1919) became President of the United States in 1901. Born into a wealthy New York City family, the young Roosevelt had attended Harvard, toured Europe and served in his state assembly. His books about politics, hunting and the West and his work reforming the N.Y. City Police brought him some fame. Then, in 1898, he became a national hero by first urging a war with Spain and then leading his own specially trained troops, the Rough Riders, into combat. He was soon elected Governor of New York and, in 1900, Vice President on the Republican ticket. Some say party bosses, angry at Roosevelt's reform work, believed that the Vice Presidency would put an end to his career. If so, their hopes were dashed when an anarchist killed President William McKinley.

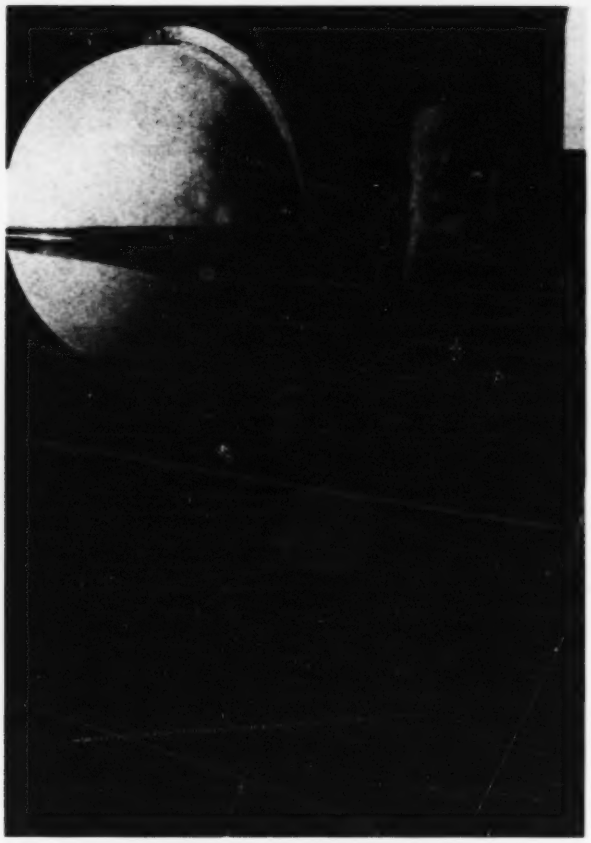
One of President Roosevelt's major goals was to make the U.S. a true world power. He believed this would only happen if U.S. ships could move freely between the Atlantic and Pacific. A canal linking the two oceans had been planned as a joint venture with England. Intent on American control of the passageway, Roosevelt promptly cancelled that agreement. Then he forced Congress to buy a bankrupt French company which had already started digging. But here progress halted. Colombia, the nation which owned the canal site, wanted more money for its lease than Congress would agree to pay.

In November, 1903, an unusual event broke the stalemate. Panama, the state where the canal site was located, declared its independence from Colombia. Two days after the coup, a Frenchman who had helped arrange the revolt arrived in Washington, D.C. and leased the isthmus on terms which favored the U.S. Despite rumors, Roosevelt claimed he did not sponsor Panama's revolt. "I kept my foot down on these revolutions," he said years later. "So that when the revolution referred to did occur, I did not have to foment it. I simply lifted my foot."

Conservation was another of Roosevelt's main concerns. He loved the West and wanted to preserve its beauty. Soon after taking office, he began to set aside large tracts of Western land as Forest Reserves. This policy closed the land to the livestock, lumber, electric power, mining and oil companies competing for its use. In 1907, Congress passed an appropriations bill which took away the president's power to create more reserves. If Roosevelt signed the bill, he could not protect any more land. If he vetoed it, his conservation programs would cease.

Roosevelt had 10 days to respond to the bill and, until he did so, it wasn't law. The President and his staff of foresters sprang into action, working around the clock to create as many new reserves as possible in that brief time. Before Roosevelt signed the bill into law, he managed to preserve an additional 16 million acres for the public and the future.

Elected in his own right in 1904, Theodore Roosevelt served almost two full terms as president. He was enormously popular: Reports of his encounter with a wild bear produced a national craze for a new product — the "Teddy" bear. But he refused to run in the 1908 election. Four years later, displeased with Republican policies, he ran for president on the Progressive or "Bull Moose" ticket. Though Roosevelt beat the Republican candidate, Democrat Woodrow Wilson won the election by a large majority.



Theodore Roosevelt, c. 1907. *National Portrait Gallery, Smithsonian Institution, Washington, D.C.*

1. What experiences in Altgeld's and Roosevelt's backgrounds might have prepared these men to be effective leaders? Which of the skills or personal qualities needed by leaders did they display?
2. Why do you think Altgeld is so little remembered? Why might Teddy Roosevelt have been so popular?

We Get Letters

Step 1. Both John Altgeld and Teddy Roosevelt had plenty of critics. Imagine that you are one of these two leaders, opening the morning's mail.

First Letter to Altgeld: The wife of a police officer killed in the Haymarket bombing angrily criticizes your pardon. You're the governor, she says, not a judge. How dare you overrule the courts! She calls you an anarchist and says you're working for the criminals, not the victims.

Second Letter to Altgeld: A Chicago businessman asks if the stories he's heard about you borrowing from state funds are true. Surely, he says, such a practice is not ethical or legal. Further, if your own affairs are in such bad order, might you not drive the state, too, to bankruptcy?

First Letter to Roosevelt: An outraged Colombian consul accuses you of starting the Panamanian revolution. He claims that, when you couldn't get the isthmus legally, you broke international law and stole it. You have trampled on the rights of his people, he charges, for your own glory and your nation's gain.

Second Letter to Roosevelt: The owner of a small sawmill in Washington state wants to know why you're trying to put him out of business. Your Forest Reserve policy is depriving his children of food. Unemployment in his town is skyrocketing. He says that Congress should decide whether forests will be conserved. But when lawmakers tried to stop you, you refused to comply with the spirit of the law.

Step 2. Acting as either Altgeld or Roosevelt, write a one- to two-page answer to one of the letters you received.

For Discussion

1. In your answer, did you choose to justify your actions? To evade the issue? How else might a leader respond to someone critical of his or her actions? How should a leader respond?
2. If you were the person who wrote to Altgeld or Roosevelt, which of the replies would impress you the most? Which would make the worst impression? Would any cause you to take further action? If so, what?
3. Should Altgeld and Roosevelt have taken the actions which provoked the letters? In each situation, what other options might they have pursued?
4. In a representative democracy like the U.S., people depend on those they elect to speak for them. Should an elected leader always represent the majority view? Why or why not?
5. The executive branch enforces and administers the law. Some leaders have claimed that, to fulfill these responsibilities, they must bend the law. Should a president or governor ever be allowed to break the law? If so, for what reasons? Under what conditions?
6. Why were no female political leaders elected to office during this era? In what other areas did turn-of-the-century women exercise leadership?

Follow Through: After following the news for a week, select the political leader whose actions during that time you most strongly support or condemn. Write him or her a letter, clearly stating your opinion and providing at least two reasons or arguments to support your views. How long does it take the official to answer your letter? Did you receive an individual or a form answer? In a report to the class, compare the style and content of the official's letter with the one you wrote in "We Get Letters."

Follow Through: Many important leaders in turn-of-the-century America served not government but business. Research the life of an economic leader of the period to find out his background and leadership skills. What was the scope of his power? To whom was he responsible? Write a job resume for the business leader. After presenting it to the class, compare the leadership qualities required in business and politics and discuss whether the general public should have any say in the selection of business leaders.

The Nation's Leader

The Constitution defines the office of the President in Article II. Over the years, the rules set down by the framers have been changed or clarified in Amendments XII (adopted 1804), XX (1933), XXII (1951) and XXV (1967).

Step 1. Your group will be assigned one of these questions:

a. Who qualifies for the office of president?
b. How is the president elected?
c. What are the president's duties and powers?
d. What limits are placed on the president?
e. How and why can the president be removed from office?

Working together, examine the pertinent parts of the Constitution and find the most complete answer possible. Look up any words or phrases you don't understand and discuss them with your group. Note the article, section and paragraph or clause in which you find each part of the answer.

Step 2. Prepare to explain your findings to the class. Describe the answer to the question in your own words. State where each part was found. Then, choose a spokesperson to present your report.

For Discussion

1. Many government workers must pass health, intelligence or psychological tests and meet education or experience requirements before they are hired. Should candidates for president have to meet similar standards? How might this help or harm the country?
2. What personal qualities do you think the president should have? Should any of these be required by law?
3. What is the purpose of having state electors choose the president? Should the president be elected directly by voters? Why or why not?
4. Under the Constitution, the president cannot exercise power or assume duties which have been assigned to Congress, the courts or the states. Review the powers given to these groups. Which, if any, might be better handled by the president? Explain your answers.
5. For what actions do you think a president should be removed from office? Are the Constitution's standards too strict or too lenient?
6. Would you support a constitutional amendment to elect presidents for one six-year term? Why or why not?
7. Besides the president, what executive officers are mentioned in the Constitution? What are their duties and powers?
8. When asked about the presidency in 1910, Theodore Roosevelt said, "I think it should be a very powerful office. And I think the President should be a very strong man who uses without hesitation every power." Do you agree?

Follow Through: Four amendments have altered the nature of the U.S. presidency. Each was passed to address a specific problem. Choose one and find out under what circumstances — how, when and why — it was passed. In a written report on your findings, describe two ways in which the amendment might benefit the U.S. and two possibly harmful consequences. Then, state and support your opinion about the amendment.

Follow Through: Using your state's constitution or charter, answer the five questions in "The Nation's Leader" as they apply to your state's governor. Prepare a chart or poster comparing your state's highest office with the nation's.

A Pop Quiz

On a separate sheet of paper, write complete answers for each of the following questions about student leaders at your school. If you don't know an answer, make a reasonable guess.

1. Who qualifies for the offices of student body and class presidents?
2. How are these officers selected?
3. What are their duties and powers?
4. What limits are placed on their actions?
5. How and why can they be removed from office?
6. Who designed your student government or wrote the document on which it is based?
7. Name five students currently holding office in your school government.

For Discussion

1. How accurate were your answers? Where and how did you get your information? In general, how are students informed about the student government and its activities?
2. Are student government leaders the most influential students at school? Are they the school's "natural" leaders (those to whom others turn for help or decisions)? Explain your opinion.
3. For what personal qualities are student leaders selected? Are these the most desirable qualities in a leader?
4. Which students, if any, are excluded from running for office? What are the advantages and disadvantages of excluding these students?
5. Do you think the reasons for removing students from office are justified?
6. Have you ever consulted a student government leader on official business? If so, explain the circumstances. If not, why not?
7. Do students have any problems with their officers? List the complaints on the chalkboard. Do adults seem to have similar complaints about elected leaders?
8. Which, if any, of the rules about your student government would you change? Why? If you wanted to make changes, how could you do so?

Unit 7: Clarence Darrow and Thomas Dewey: The Adversary System

Clarence Darrow in court, 1925. *Library of Congress.*

Dynamite!

Clarence Darrow got his first big break when the political bosses who ran Chicago hired him as the city's corporate lawyer. Soon, he counted banks and railroads among his law firm's wealthy clients. Even so, Clarence Darrow made his name defending workers and the poor.

Born to a family of freethinkers in a small Ohio town, Darrow grew up questioning authority. As a young writer, lecturer and state lawmaker, he worked for unionism, socialism and pacifism. He fought racism and anti-Semitism. Even enemies, who scoffed at his knowledge of the law, admitted the power of his arguments and envied his success with juries. By 1912, Darrow was a famous lawyer. In May of that year, he found himself in a Los Angeles courtroom, not as advocate but as defendant. The charge? Bribing jurors.

Eighteen months before, on October 1, 1910, a bomb had exploded at the *Los Angeles Times*, killing 20 people. The paper's powerful publisher, Harrison Otis, blamed labor unions for the bombing. Six months later, a suspect being held in seclusion by private detectives confessed. He named two union men, James and John McNamara, as accomplices. Labor leaders thought the men were being framed and hired Darrow to defend them.

Darrow took the case with reluctance. On trial in an anti-union town, his clients were not likely to get the benefit of the doubt. Moreover, the state had a strong case against James McNamara and had said it would hang both brothers. To save his clients' lives, Darrow made a deal with the prosecutors. After seven long weeks of jury selection (one of the first steps in a trial), the McNamaras changed their innocent plea to guilty. In return, James got a life sentence, John got 15 years. The news delighted the business community and outraged labor leaders, who said Darrow had betrayed them.

Four days before the change of pleas, one of Darrow's private detectives, an ex-deputy sheriff named Bert Franklin, was arrested. He had been caught in broad daylight on a main street in downtown Los Angeles, handing a $500 bill to George Lockwood, a prospective juror in the McNamara case. Lockwood, who worked for the sheriff, said Franklin was trying to buy his vote.

Was Franklin acting on Darrow's orders? After all, in our legal system, a trial is not a cooperative search for the truth. Instead, prosecution and defense are pitted against one another. As objective witnesses to the struggle, judge and jury are supposed to decide the outcome. Locked in such a battle, had Darrow's zeal led him to break the rules?

At first, Franklin said his boss knew nothing of the crime. But when prosecutors dropped the case against him in return for his testimony, Franklin said Darrow had told him to bribe not only Lockwood, but others. Humiliated by the charges, Darrow claimed Franklin was lying. After hearing Franklin's story, a grand jury indicted Darrow. The lawyer would stand trial.

1. Clarence Darrow supported, and opposed, a number of "isms." Define the five that are mentioned in the text.
2. John Peter Altgeld (discussed in Unit 6) was one of Darrow's law partners for several years. How were their goals and ideals similar?
3. Led by the *Times*, Los Angeles business interests prevented strikes, outlawed picketing, disrupted union meetings and used police to beat organizers. James McNamara said he was sorry he killed anyone but, denied reasonable ways to improve their lot, workers had no choice but violence. "I may swing," he said, "but if I do, it will be for a principle." Do you agree with this reasoning? Why or why not?
4. To ex-president Teddy Roosevelt, the McNamaras were no better than "any band of mere cutthroats." Are people who commit violence for a cause different from common criminals? Should they be treated differently?
5. Though organized labor funded the McNamara defense, Darrow did not consult these groups while arranging the guilty plea. Should Darrow's first duty have been to his clients? Or to the people paying the bills? Explain your answer.
6. Defense and prosecution attorneys used private detectives to investigate witnesses and jurors. One of Darrow's detectives would take her six-year-old niece for a buggy ride past prospective jurors' homes. She'd stop and ask if the child could use the toilet. Left alone in the living room, she'd note what books or magazines the man read and whether he had a Bible. What was Darrow trying to find out? Is this tactic fair?
7. Is tampering with a juror a serious crime? Why or why not?
8. What, if any, purpose is served by pitting the defense and prosecution against each other during a trial? Would justice be better served if the two sides were not adversaries?

Los Angeles County Courthouse, 1911. *Library of Congress.*

Voir Dire

People's crimes and lawsuits are supposed to be tried by impartial juries of their peers. To be "peers," jurors must usually live in the jurisdiction where the crime took place. They must also meet age and other requirements set by their state. But how can one make sure jurors will be impartial? American courts rely on a process called *voir dire*, during which jurors are questioned about their competence.

When a trial starts, prospective jurors (usually many more than will serve) are sent to the courtroom. The required number — most often, 12 — are sworn in and told the charges against the defendant. The judge then asks each juror general questions about name, age, job and prior jury experience to be sure he or she meets state standards. The judge might also ask whether service will cause personal hardship, such as loss of a job or health problems.

Jurors who pass these tests are questioned about their impartiality. In most cases, prosecution and defense lawyers either suggest questions to the judge or interrogate jurors themselves. Do jurors know any of the people involved in the case? How much have they heard about the case from the news? How might their jobs, political or religious views or past experiences affect their verdict?

If an attorney thinks a juror is unqualified (for bias or another reason), and the judge has not excused the juror, the attorney can "challenge for cause." The lawyer explains why the challenged juror should be excused and the judge decides whether the reasoning is valid. Most states also allow lawyers for both sides to request the removal of a limited number of jurors without stating a reason. This is called a "peremptory challenge." Excused jurors are replaced by others from the jury pool. The *voir dire* continues until all the needed jurors have been chosen.

Though the details of *voir dire* vary from state to state, its purpose remains constant. The judge identifies and excuses jurors who do not meet state standards or who seem unable to approach the case impartially. Attorneys for each side try to weed out jurors likely to be biased against their case and, at the same time, keep jurors who might favor their side.

Step 1: Attorney Teams. You are a defense or prosecution attorney — your teacher will tell you which — working on the Darrow bribery case. In a short while, you will question a prospective juror. Your job is to find out if he might be biased against your side and, so, should be challenged for cause. Work with the other defense or prosecution lawyers on your team to write at least five questions to ask the candidate. Use these guidelines:

a. In this case, what prejudices might affect a juror's decision?
b. What questions about the juror's background, experiences and views might reveal these biases?
c. Phrase questions to avoid "yes or no" answers. Instead of "Are you prejudiced against labor unions?", try "What is your opinion of labor unions?"

d. Keep questions simple and specific. If a question covers more than one subject, split it into two questions.

Arrange your questions in a logical order. Then, though you should all contribute during the questioning, appoint one person to lead it.

Step 1: Prospective Jurors. In a short while, defense and prosecution attorneys will question you to see if you should decide the Darrow bribery case. As you study the role you have been assigned, fill in the details. How much schooling has the man had? What are his politics? What does he do in his spare time? During questioning, base your answers on the information in your description, the history you have created and, if you wish, your own opinions.

Clifford Rochester, 58, unmarried. A cattle rancher who eagerly reads the newspapers. Once heard Darrow lecture on socialism. Has served on one jury in a trial for public drunkenness. Voted to convict.

James Kynette, 49, married with three children. An ex-policeman who now sells real estate. Tried to organize a policemen's union. Met Franklin and Lockwood once or twice while on the force.

Harry Ferguson, 37, married with five children. Inherited several large orange groves from his mother. Recently sponsored a fundraiser for an orphanage at which *Times* publisher Harrison Otis was honored. No prior jury experience.

Wilson Skeele, 42, married with no children. A butcher who works in a shop downtown. Owns a small amount of stock in streetcar and telephone companies. Juror in the trial of city official accused of taking bribes. Voted to acquit.

Frank Ketch, 32, unmarried. A carpenter, out of work for three months during the last year. Belonged to a union, but quit because leaders gave the best jobs to their friends. No prior jury experience.

Lloyd Smythe, 42, married with one child. Owns a roofing tile factory which workers struck for three weeks last year. Just quit the Merchants and Manufacturers Association (a group that raised funds to prosecute the McNamaras). Has denounced city leaders as "knaves and fools."

Step 2. Prosecution and defense attorneys should meet with the juror assigned to their group. The juror will begin by stating his name and occupation. Then, the defense team will have five minutes to question the juror. Next, the prosecution will have five minutes for questioning. Your teacher will tell you when to begin and end each round.

If a juror gives an incomplete answer or says "I don't know," attorneys should probe with further questions. Also, pay close attention to the questions asked, and the answers received, by the opposing team.

Step 3. After the second round of questioning, the two attorney teams should excuse the juror and meet separately. Teams will have three minutes to decide whether they should challenge the juror. Why is, or isn't, he likely to be biased against your side? Be prepared to justify your decision to the class.

Darrow. *Library of Congress.*

For Discussion

1. In your group, what was the best question asked of the juror? Why?
2. During the questioning, what kinds of answers indicated bias? What statements made you think a juror would be impartial?
3. In your state and local courts, what role does the judge take during *voir dire*? May attorneys question jurors? How are peremptory challenges limited?
4. In what ways, if any, might the process of *voir dire* itself prejudice jurors?
5. In Darrow's trial, all the prospective jurors were male. They were also all white. Could Darrow get a fair trial from such a jury? Could a female or black defendant?
6. The Supreme Court has held that jurors who are so strongly opposed to the death penalty that they might not be able to impose it can be excluded from capital cases. Under this ruling, will a defendant whose life is at stake get a fair trial? Is someone opposed to the death penalty too biased to decide a capital case? How might excluding death penalty opponents affect the general make-up of juries?
7. Under what circumstances is trial by jury a constitutional right? What else does the Constitution say about juries?
8. The *voir dire* for Darrow's trial took nine days. In the McNamara trial, it took several weeks. Is this kind of jury selection effective enough to justify the time it takes?

Follow Through: Some courts have trouble finding enough people to serve on juries. Investigate this problem in your community. How many jurors do local courts need each year? How are qualified jurors identified? How many are exempted? Why? What, if anything, would court personnel change about the system? Include at least three suggested reforms in your report.

Some Verdicts

Was Darrow guilty? He cared so much about the McNamara case that, according to some of his friends, he'd have done anything to avoid convictions. Darrow often accused the rich and powerful of bribing jurors and coercing judges. As evidence against his clients mounted, perhaps he too tried such tactics.

Others say that, if Darrow had wanted to bribe jurors, he would not have used Franklin, whom he did not trust, as a go-between. Nor would he have approached jurors known to be anti-labor or paid them in large, traceable bills. Franklin and Lockwood were connected with the city's business interests, which had every reason to try to discredit their famous opponent.

At the trial, several prosecution witnesses swore that Darrow had directed Franklin or tried to bribe jurors. But none of the claims were supported by more than one witness and most were contradicted by statements from defense witnesses. The jury found Darrow innocent. Prosecutors tried Darrow again, for bribing a second juror. This time the jury could not reach a unanimous decision. Four men wanted to acquit, eight wanted to convict. When a mistrial was declared because of the hung jury, prosecutors gave up and dropped the case.

1. All jurors swear to base their decisions on the evidence alone. Four of the jurors who wanted to convict Darrow at his second trial said that their votes were influenced by an impassioned speech he made justifying labor's use of violence. If Darrow supported criminal acts, they said, he could have broken the law. Do you agree with these jurors' reasoning? Should Darrow's speech have had bearing on their decision? Why or why not?

2. A judge once rebuked Darrow for trying to prejudice the jury with his opening remarks. "What do you think I'm here for?" Darrow replied. "It's my business as a lawyer to prejudice the jury." Do you agree with Darrow? Why or why not?

3. What is a defense lawyer's highest duty: defense of his or her client or defense of the truth? What is a prosecutor's highest duty? A juror's?

Law Office

"I have had pretty nearly every kind of case," Clarence Darrow told the jury during his bribery trial. Only a tenth of his cases were criminal and about one third were pursued *pro bono* ("for the good," without fee). Yet, Darrow was often attacked for the cases he took and his motives in choosing them. Conservative critics said he used the legal system to force his radical views on the rest of society. Leftists claimed he sold himself to the highest bidder and bled unions dry by charging huge fees. Both sides accused him of chasing fame and glory.

Like any attorney, Darrow considered several factors when deciding whether to take a case:

- Could he win?
- Would it improve his reputation?
- Would he make money?
- Was an important social issue at stake?
- Was the client innocent or acting in a just cause?

During the roaring 1920s, Darrow considered working on the cases described below. Imagine you were an attorney during that era of dramatic prosperity, dire poverty and great social upheaval. Which of these cases would you take?

1917. Bill Healy, Chief of Police under Chicago's infamous Mayor Thompson, is accused of conspiring with the underworld to protect vice and gambling. The witnesses against him are crooks and criminals. Healy, old and broken, "doesn't remember" any of the crimes with which he's charged. His political bosses will pay good money to keep the Chief out of jail.

1920. Fearful of communism, many states have outlawed speeches and writings which promote violent or sweeping social change. Benjamin Gitlow, a Communist leader, is charged with breaking one of these laws. He wrote a pamphlet urging the use of violence, if need be, to replace the capitalist U.S. government with a Marxist state. Proud of his views, Gitlow wants a chance to explain them to a jury. The Communist Party may be able to raise a small defense fund.

Edith Rockefeller McCormick, 1932. *UPI/Bettmann Archive.*

1921. After a quarter century of marriage, Harvey and Edith McCormick want a divorce. Though wealthy in her own right, Edith gets a yearly allowance of $800,000 from her father, John D. Rockefeller. Harvey heads the Interna-

tional Harvester Company (once McCormick Reapers) and is worth about $50 million. Harvey left Edith in Zurich over three years ago. Neither party contests the divorce or the property settlement. Harvey just needs a lawyer to discreetly file the necessary papers.

1924. Nathan Leopold, 18, and Richard Loeb, 17, both college graduates from prominent families, have confessed to killing 14-year-old Bobbie Frank. Their families greatly fear the boys will hang, as much from anti-Semitism as from the vicious nature of their crime. During the murder, Leopold and Loeb thought they were "supermen," unbound by moral rules which hampered lesser beings. Freudian psychoanalysis, though almost unknown in the U.S., could help prove the teenagers' legal insanity and save them from the death penalty.

1925. Tennessee has passed a law to prevent the teaching of evolution in schools supported by state taxes. John T. Scopes, 24, a substitute teacher at the high school in Dayton, Tennessee, believes biology cannot be taught without evolution. A group of like-minded Dayton citizens have arranged his arrest in order to test the law. The American Civil Liberties Union has offered some financial help, but the attorneys will work *pro bono*.

1932. In Scottsboro, Alabama, nine black teenagers have been convicted of raping two white women and sentenced to die. There are serious questions about whether the young men received a fair trial. The Communist group which the defendants have chosen to represent them wants the best lawyers in the nation for an appeal. However, the group insists on complete control of all aspects of the case.

Step 1. Review the five reasons for taking cases listed in the text. As a lawyer, which factors are most important to you? Rank order the list from 1 (most important) to 5 (least important).

Step 2. You and your law partners are meeting in a wood-paneled office on the eighth floor of a building downtown. After discussing each case, decide whether to accept it. Note the reasons for your decisions so you can explain them to the class.

For Discussion

1. Clarence Darrow accepted all but one of these cases. Which do you think he turned down? Why?
2. Which reason for taking cases did you list as the most important? How did this affect your decisions? What might happen if most lawyers based their decisions primarily on this factor?
3. One of Darrow's partners, the poet Edgar Lee Masters, saw the law as a way of making enough money to retire and write. But Darrow used the profit from wealthy clients to pursue causes and often committed the firm to work for free. Did you and your partners disagree about which cases to take? How did you settle these conflicts?

Loeb and Leopold on trial, 1924. *UPI/Bettmann Archive.*

4. Though he pled many cases *pro bono*, Darrow charged high fees to those who could pay. (In the Leopold and Loeb case, his fee was $200,000 though, in the end, he and his two partners collected less than half that amount.) As a defense lawyer, would you continue on a case if you found out the client could not pay your fees?
5. Darrow saw nothing wrong with working to free someone he knew was guilty. He believed most people committed crimes for reasons outside their control. He did not think punishing people prevented crime. Would you continue on a case if you found out your client was guilty? Why or why not?
6. Each of these cases involved at least one controversial social or legal issue. Identify these issues. Why were they important in the 1920s? Which are still controversial?

Follow Through: Find out what happened during the trial or appeal of one of these cases. As part of your research, read newspaper accounts written at the time of the event. Write a paper describing the legal proceedings, any evidence or arguments presented and the verdict or decision. What happened to the participants afterwards?

Follow Through: Legal advice can be very expensive. Consult at least two local attorneys and find out what they would charge to handle (1) a drunk-driving arrest for someone with no prior record, (2) a divorce with child custody and a property settlement, (3) a suit to collect $8,000 in medical and repair bills resulting from an auto accident and (4) an arrest for possession of cocaine with intent to sell. How might any of these cases be handled without a lawyer? What free or low-cost legal services are available in your community?

Follow Through: Amendment VI says every defendant has a right to the assistance of counsel. Once, this only meant that people who could afford lawyers were allowed to hire them. The book *Gideon's Trumpet* explains why that has changed. Present an oral report on this book or arrange to show the movie version. Using questions you have written, discuss whether taxpayers should provide lawyers for people who can't afford them.

Gangbuster

The rackets! Early in the Great Depression, when many people struggled to buy food, these dreaded networks of blackmail, graft and violence cost the nation an estimated $11 billion a year. In New York City, where the rackets touched every business, they increased the cost of living by 20%. Fruit, chicken, milk didn't reach market without a mobster's okay. Laundries, groceries, delis stayed open only if they paid the gangs. Racketeers muscled in on business groups and unions. Torture, murder and mysterious explosions reminded victims to pay up and keep their mouths closed. Bribes to police, judges and politicians made sure victims wouldn't be heard.

Into this scene entered Thomas E. Dewey. Born in a small Michigan town, his father a newspaper editor, Dewey came to New York to study law. He took an active role in Republican Party politics and landed a job with the U.S. Attorney. Then, starting from one bank deposit slip found on a thug's corpse, Dewey built an airtight, eloquent case proving that mobster Waxey Gordon had paid $10.79 in income tax on $4.5 million of underworld profits. Waxey went to jail. In 1935, New York State appointed Thomas Dewey, age 33, special prosecutor to clean up the rackets.

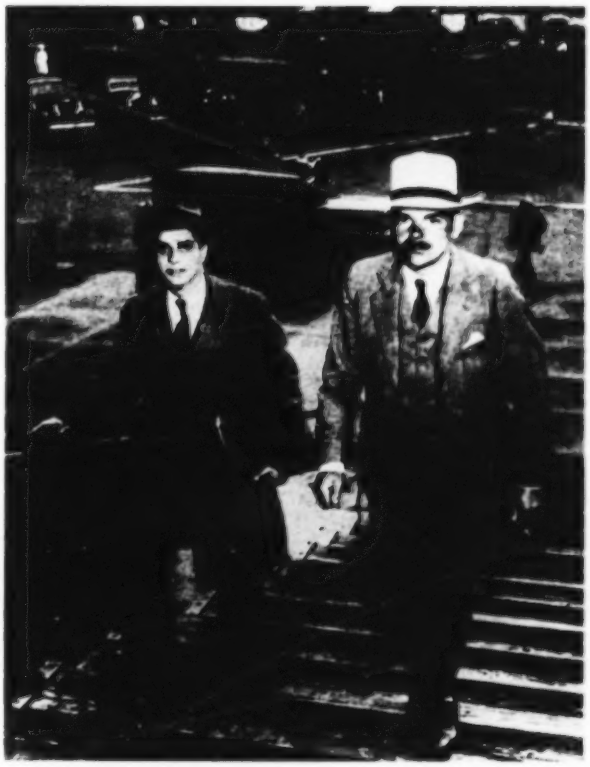
Dewey's first task was to establish that crimes were taking place: Racketeering did exist and such action was illegal. Next, he had to determine exactly which of the many famous gangsters had committed which crimes. Finally, he had to amass enough evidence to prove each gangster's guilt to 12 jurors.

He asked the whole city to help. "Every shakedown, every threat, every stink-bomb throwing is a state crime," he told the public. "If you have evidence of organized crime, bring it to us. . . . The rest is our job. We will do our best." Three thousand New Yorkers responded in the first month.

The first cases Dewey brought to trial concerned loan sharks. Unable to borrow from banks, people went to unscrupulous lenders and paid 20% interest *per week*. A missed payment brought threats, beatings, maybe worse. Dewey's investigators found at least two solid witnesses against each of the city's best-known loan sharks. Wary of the normal courts and sure of the suspects' guilt, Dewey tried 30 defendants in a Court of Special Sessions under less strict due process rules. In little more than a month, he had 29 convictions.

Dewey wanted to prosecute crime bosses, not petty criminals. He almost told Eunice Carter, a black investigator, not to bother pursuing rumors about a prostitute racket. But Dewey changed his mind when Carter's work led up the underworld ladder to Charles "Lucky" Luciano, the head of organized crime in New York. A four-week trial retraced months of piecing together the reluctant memories of terrified prostitutes. The jury found Luciano and nine codefendants guilty of more than 500 criminal counts. Charlie Lucky went to jail.

Nailing such famous gangsters made good newspaper copy. But Dewey also went after the more shadowy industrial, union and political rackets. He busted mobsters who had taken over restaurants and waiters' unions. He broke up Tootsie Herbert's poultry racket, saving New York consumers $5 million a year. He built a case against Louis Lepke Buchalter and Joe Gurrah Shapiro, garment racketeers who founded an assassins' ring called Murder, Inc. Then, after two years as Special Prosecutor, he ran for the office of New York District Attorney. He won.



Special Prosecutor Thomas Dewey (right) on his way to court, 1935. *UPI/Bettmann Archive.*

1. Dewey wanted gamblers, prostitutes and other petty criminals to testify against their bosses. In reward for their services, those who cooperated would be put on probation (allowed their freedom as long as they did not commit further offenses) and given society's help. Do you support this kind of bargain? Why or why not?

2. To get testimony against Luciano, Dewey picked up 125 people and held them in secret. He booked them on minor charges and had bail set at $10,000 each. He promised freedom, overseas travel and other luxuries to those who cooperated. Those who did not, he threatened to hound with prosecution for every possible cause. Were Dewey's tactics justified by Luciano's conviction? Why or why not?

3. Dewey asked the press to follow certain rules. For instance, photographers should not snap him with an open mouth or while eating. Anything that made him look foolish, he said, would destroy his authority and aid his foes. Did Dewey have the right to make such rules? Should the press have complied?

4. When running for D.A., Dewey said he would use local law enforcement to wipe out organized crime rather than pursue petty criminals. How might this new focus help or hurt citizens? Was Dewey right to make gangbusting his top priority? Would this be an appropriate priority today?

Follow Through: The government guesses that, today, organized crime employs 414,000 people and brings in $100 billion a year. Clearly, these criminal groups are a notable force in our society, yet tracing their history is difficult. Examine the material on organized crime at your library. Identify at least three problems a historian would face in trying to report on the development and activities of these groups. Discuss your findings with the class.

Assistant D.A.

As special prosecutor, Dewey had focused all his attention on one aspect of crime. Now, as District Attorney, he faced the wide range of criminal activity found in any major city. Were the rackets more important than murder, muggings, theft, fraud or vice?

Like defense lawyers, prosecutors can choose the cases they will pursue. Most often, when a crime takes place, the police investigate, perhaps arrest someone and turn their evidence over to the D.A. The D.A. and his or her assistants then exercise their *prosecutorial discretion.* They decide with what crime, if any, a suspect will be charged. The questions they consider include:

- Is there a reasonable doubt that the suspect is guilty?
- Is there evidence to support a guilty verdict? (Was it legally obtained? Are witnesses reliable and convincing?)
- How much harm did the offense cause? Does the community consider it a crime? Does the offense justify the probable punishment?
- Is the offender very old or very young? What is his or her past record?

During his term as D.A., Dewey was presented evidence about these four cases. Imagine that he has asked you, his assistant, to review and evaluate them for possible prosecution.

Robbery. A 24-year-old man is accused of stealing $2.50 from a storekeeper by threatening physical violence. The merchant has identified the suspect and will testify. At age 21, the suspect stole a typewriter and pawned it for $8. He pled guilty and served a two-year prison term. He has no job now, but has worked whenever able to find work. Conviction could mean a 20-year sentence.

Theft. A prominent financier, outspoken in his opposition to the Democrats' New Deal, is accused of stealing $100,000 from his wife's trust fund. The wife and a sister-in-law have provided evidence. The suspect owns a seat on the New York Stock Exchange and has been an advisor to two presidents. If convicted, he could spend 20 years in prison.

Conspiracy to corrupt justice. A powerful political boss is accused of bribing judges and police to protect an illegal gambling racket. A bank manager who worked with the boss has turned state's witness. Though not the only evidence against the boss, the banker's testimony is the most compelling and the most likely to sway a jury. However, the banker is easily flustered and could break under cross-examination.

Graft. A federal judge stationed in New York is accused of taking more than $400,000 in bribes to alter his decisions. Evidence found by newspaper reporters includes the judge's receipt of a $25,000 "loan repayment" from Lepke and Shapiro of Murder, Inc. soon after he reduced their bail. The judge says he will resign if assured that no charges will be brought against him.

Step 1. Review the questions to consider when exercising prosecutorial discretion. Then, discuss the cases with your group. For each, list the factors that suggest you should prosecute the suspect. What factors suggest that you should not pursue the case?

Step 2. Based on your discussion, rank the cases in order from 1 (most important to prosecute) to 4 (least important to prosecute). Is there any case you think should be dropped entirely? Prepare to present and explain your decisions.

For Discussion

1. Why don't prosecutors pursue every case?
2. Does prosecutorial discretion promote efficiency? Justice? What are some disadvantages to allowing prosecutors this leeway?
3. Compare the criteria prosecution and defense lawyers use when deciding whether to take a case. Why are they different?
4. Investigating crimes is usually considered the sheriff's or police department's job. Should prosecutors investigate their own cases? Why or why not?
5. One alternative to prosecution is the plea bargain. The defendant agrees to plead guilty, sometimes to a lesser charge. In return, he or she may get a lighter sentence. Because of limited resources, your office can't prosecute the cases you ranked 3 and 4. Should you negotiate a plea bargain with the suspects? Why or why not?
6. What are the possible benefits of plea bargaining — to the D.A.'s office, the defendant, society? What are some disadvantages?

Follow Through: What cases are prosecutors in your area most likely to pursue? For what crimes are suspects not likely to be tried? Interview a lawyer from the D.A. or City Attorney's office. Find out how decisions to pursue cases are made and what factors are considered.

Follow Through: Thomas Dewey served three terms as Governor of New York (1943-1955). Twice, he was the Republican nominee for President of the United States (in 1944 and 1948), but both times the Democratic candidate defeated him. Research Dewey's political goals. In a written report, describe his policies and explain why you think he didn't become president.

Unit 8: A Long and Winding Road: Civil Rights and the Law

A Brief History of Jim Crow

"I can ride in first-class cars on the railroads and in the streets," wrote journalist T. McCants Stewart. "I can stop in and drink a glass of soda and be more politely waited upon than in some parts of New England." Perhaps Stewart's comments don't seem newsworthy. Consider that he was reporting from South Carolina in 1885 and he was black.

Stewart had decided to tour the South because he feared for freedmen's liberties. In 1868, with Amendment XIV, the Constitution had finally given black men full citizenship and promised them equal protection under the law. Blacks voted, won elected office and served on juries. However, ten years later, federal troops withdrew from the South, returning it to local white rule. And now, the Republican Party, champion of Reconstruction and freedmen's rights, had fallen from national power. Would black people's rights survive?

After a few weeks on the road, Stewart decided they would. True, terrorism against blacks — lynching, rape, arson — ran unchecked. True, many rural blacks lived under a sharecropping system little better than slavery. But Stewart noted many signs of change. He saw a black policeman arrest a white criminal. He saw whites casually talk with black strangers. "The morning light is breaking," he told his readers.

Stewart was wrong. Over the next 20 years, blacks would lose almost all they had gained. Worse, denial of their rights and freedoms would be made legal by a series of racist statutes, the Jim Crow laws.

"Jim Crow" was a derisive slang term for a Negro man. It came to mean any law which established different rules for blacks and whites. First passed in the North long before the Civil War, such laws were based on the theory of white supremacy. In the depression-racked 1890s, racism appealed to whites who feared losing their jobs to blacks. Politicians abused blacks to win the votes of poor white "crackers." Newspapers fed the bias of white readers by playing up (sometimes even making up) black crimes.

In 1890, in spite of its 16 black members, the Louisiana General Assembly passed a law to prevent black and white people from riding together on railroads. *Plessy v. Ferguson* (16 S. Ct. 1138, 1896), a case challenging the law, reached the U.S. Supreme Court in 1896. Upholding the law, the Court said that public facilities for blacks and whites could be "separate but equal." Soon, throughout the South, they *had* to be separate.

Two years later, the Court seemed to seal the fate of black Americans when it upheld a Mississippi law designed to deny black men the vote. Given the green light, Southern states began to limit the voting right to those who owned property or could read well, to those whose grandfathers had been able to vote, to those with "good characters," to those who paid poll taxes. In 1896, Louisiana had 130,334 registered black voters. Eight years later, only 1,342, one percent, could pass the state's new rules.

A Jim Crow bus in Dallas, Texas in 1956, a few days before the signs were scheduled to be removed. *UPI/Bettmann Archive.*

Jim Crow laws touched every part of life. In South Carolina, black and white textile workers could not work in the same room, enter through the same door or gaze out of the same window. Many industries wouldn't hire blacks; many unions passed rules to exclude them.

In Richmond, one could not live on a street unless most of the residents were people one could marry. (One could not marry someone of a different race.) By 1914, Texas had six entire towns in which blacks could not live. Mobile passed a Jim Crow curfew: Blacks could not leave their homes after 10 p.m. Signs marked "Whites Only" or "Colored" hung over doors, ticket windows and drinking fountains. Georgia had black and white parks. Oklahoma had black and white phone booths.

Prisons, hospitals and orphanages were segregated as were schools and colleges. In North Carolina, black and white students had to use separate sets of textbooks. In Florida, the books couldn't even be stored together. Atlanta courts kept two Bibles: one for black witnesses and one for whites. Virginia told fraternal social groups that black and white members could not address each other as "Brother."

Though seemingly rigid and complete, Jim Crow laws did not account for all of the discrimination blacks suffered. Unwritten rules barred blacks from white jobs in New York and kept them out of white stores in Los Angeles. Humiliation was about the best treatment blacks who broke such rules could hope for. Groups like the Ku Klux Klan, which revived in 1915, used venom and violence to keep blacks "in their place."

Over 360,000 black men served in World War I. The country welcomed them home with 25 major race riots, the most serious in Chicago. White mobs lynched veterans in uniform. Black Americans fought back. The National Association for the Advancement of Colored People, founded in 1909, and the Urban League publicized abuses and worked for redress.

Though they drew support from both races, these groups barely stemmed the tide. The 1920s and 30s produced new Jim Crow laws. By 1944, a Swede visiting the South pronounced segregation so complete that whites did not see blacks except when being served by them.

But World War II changed America, inside and out. The link between white supremacy and Hitler's "master race" could not be ignored. Jim Crow shocked United Nations delegates who reported home about the practice. "Racial discrimination furnishes grist for the Communist propaganda mills," said a government spokesman. "It raises doubt even among friendly nations as to the intensity of our devotion to the democratic faith."

In 1948, President Harry Truman took decisive action to promote racial equity. He urged Congress to abolish the poll tax, enforce fair voting and hiring practices and end Jim Crow transportation between states. Four Southern states abandoned Truman's Democratic Party in protest. Then, as Commander in Chief, Truman ordered the complete integration of the armed forces. He did not wipe out racism, but, trained to obey commands, officers complied as best they could. In Korea, during the 1950s, integrated U.S. forces fought their first war.

Back at home, when the new Eisenhower administration downplayed civil rights, federal courts took the lead. In 1950, the NAACP decided to challenge the concept of "separate but equal." Fed up with poor, overcrowded schools, black parents in South Carolina and Virginia sued to get their children into white schools. Both times, federal courts upheld segregation. Both times, the parents appealed. Meanwhile, in a similar case, Delaware's Supreme Court ordered a district to admit black students to white schools until adequate classrooms could be provided for blacks. This time, the district appealed.

The Supreme Court agreed to consider these three cases in combination with one other. In Topeka, Kansas, where schools for blacks and whites were equally good, Oliver Brown wanted his 8-year-old daughter, Linda, to attend a school close to home. However, state law prevented the white school from accepting Linda because she was black.

On May 17, 1954, at the stroke of noon, the nine Supreme Court Justices announced their unanimous decision in the four cases, now grouped as *Brown v. Board of Education* (74 S. Ct. 686, 1954). They held that racial segregation of children in public schools, even in schools of equal quality, hurt minority children. "Separate educational facilities are inherently unequal." The practice violated the Constitution's 14th amendment and must stop. To some, the judgment seemed the fruitful end of a long struggle. Actually, the struggle had just begun.

1. Imagine that you were born black in 1860 and lived until 1920. Would you have any faith in the U.S. legal system? In the "American way of life"? Why or why not?

2. How did Jim Crow laws affect the American image abroad? How did our foreign policy impact racial equity at home?

3. Most laws are meant to promote the general welfare or protect society from an evil. Did Jim Crow laws serve these purposes? If so, how? If not, what was their purpose?

4. Under Jim Crow, black facilities were often of far poorer quality than those reserved for whites. Separate rarely meant equal. If blacks and whites had received equal treatment, would Jim Crow laws have been fair?

5. "I don't believe you can change the hearts of men with laws or decisions," said one person who opposed court-ordered desegregation. Do you agree with the statement? Is it a valid reason to continue segregation?

6. The Supreme Court told schools to desegregate "with all deliberate speed." President Eisenhower disagreed. "If you go too far too fast," he warned, "you are making a mistake." What might be gained by each approach to integration? What are the disadvantages of each? Which would you have chosen?

7. Read Amendment XIV and explain how the Supreme Court used it to disallow segregation in the *Brown* decision. Why didn't the Court use it for the same purpose in *Plessy v. Ferguson*?

Follow Through: Collect oral histories from at least five people in your community who reached adulthood before 1954. How and to what degree were races segregated during their youth? What, if any, Jim Crow laws were in effect? To what degree were they obeyed? What happened to blacks and whites who broke them? To those who broke unwritten segregation rules?

Follow Through: Chinese, Japanese, Jews, Catholics, Irish, Eastern Europeans: All have suffered discrimination in the U.S. Research one of these groups and find out what federal or state laws have limited their civil rights. When and why were the laws passed? How and by whom were they resisted? Under what circumstances were they repealed or annulled?

Elizabeth Eckford leaving Little Rock's Central High School after National Guardsmen barred her enrollment. *UPI/Bettmann Archive.*

Real Decisions

In the decade after the *Brown* ruling, American ideals confronted American reality. Those demanding immediate integration, those insisting on permanent segregation and all those in between struggled for a winning strategy. People tried terror and passive resistance, emotional pleas and reasoned appeals. They vied for public support. Their efforts engaged all our legal systems, from local law enforcement to the Supreme Court. Put yourself in that dynamic time by taking on one of the cases described below.

Step 1. Discuss the case with your group. What are your goals? What results do you want to achieve? Are there any outcomes you want to prevent? As a group, list the goals you've identified in order of importance.

Step 2. What could you do to achieve your goals? Brainstorm a list of at least five ways you could respond to the situation. (Consider the powers of your office or your rights as a citizen. If necessary, review the unit in this book which applies to your role.)

Step 3. Evaluate each option you identified. Is it likely to achieve your goals? What other results might it have? How might your "opponents," bystanders, the community or the nation respond? Based on your goals, select the best option.

Step 4. Prepare a brief announcement of your decision. In it, describe the situation and state your goals. Then explain what you've decided to do and the reasons for your decision.

Case 1. You are a black community leader in Montgomery, Alabama. Yesterday, Thursday, December 1, 1955, Rosa Parks boarded the bus after a long day sewing clothes. She took a seat toward the front of the Jim Crow section. At the next stop, white shoppers overflowed their allotted seats and told Parks to move back. "I was just plain tired," she said later, "and my feet hurt." When she refused to budge, police took her to jail.

Parks' trial is set for Monday. The city's black Women's Council, which has pressured merchants into integrating water fountains, is calling for a major protest. Other groups are wary of state laws against boycotts or fear violent reprisals. Tonight, at a meeting with other community leaders, you must decide how to respond to Parks' arrest.

Case 2. You are an advisor to President Dwight D. Eisenhower. It is the afternoon of Monday, September 23, 1957 and a crisis is brewing in Little Rock, Arkansas. Three weeks ago, 15-year-old Elizabeth Eckford walked up the steps of Central High to start the new semester. When she reached the door, an Arkansas National Guardsman barred her way. Arguing that integration would lead to violence, Governor Orval Faubus had called up troops to prevent Eckford and eight other black students from enrolling at the all-white school. Denied entrance, Eckford made her way back to the street through a gauntlet of jeering whites.

After a meeting with the President and orders from a federal court, the F.B.I. and the Department of Justice, Faubus finally withdrew his troops last Friday. At the same time, he urged black students to stay away from Central High for their own safety and the public good. About 8:45 this morning, when a mob of 1,000 whites found out that black students had entered the building, they rioted. At 11:30, the black children escaped in police cars. The President has said he cannot conceive of enforcing integration with federal troops. Yet he has sworn to uphold the Constitution. Meet with his other advisors and recommend a response to this crisis.

Case 3. You are a white merchant in Greensboro, North Carolina. The trouble began about a month ago, on February 1, 1960. Late that afternoon, four black freshmen from the Ag/Tech College bought a few things at the Woolworth's. Then they sat down at the lunch counter and ordered coffee. "We don't serve colored here," said the waitress. One young man pointed out that she'd just sold him a trinket not two feet away. The flustered waitress called the police. The students just sat there until Woolworth's closed.

The next day, they were back — quiet, polite, well-dressed — with almost 20 friends who took up every seat at the counter. On the third day, students were sitting in shifts. Eight states have since reported sit-ins. The one at Woolworth's has disrupted trade and brought Greensboro the wrong kind of national publicity. At today's meeting with other local business people, decide what to do about the sit-in.

Case 4. You are a federal marshal assigned to the Oxford Campus of the University of Mississippi. It is October 1, 1962. Tomorrow morning ex-Air Force Staff Sergeant James Meredith, a nine-year veteran, will try to sign up for classes. Meredith fought a 16-month suit to win admission, during which the school and state government tried to smear his name. The governor ordered state police to arrest anyone who tried to enroll him and even stood at the school's front door to bar the way.

Late this afternoon, your force of 400 U.S. marshals seized control of the school's main building and escorted Meredith to his dorm room. Meanwhile, 2,500 whites, armed with stones, iron bars, gasoline bombs and guns, have gathered at the campus mall. State police have withdrawn; rumor has it they're supporting the civilians. From the center of campus come reports that a riot is beginning. Discuss the situation with the other officers present. What orders should you give your men?

Case 5. You are a Senator from a Southern state. After President John Kennedy's death in November, 1963, Texan Lyndon Johnson surprised many by continuing to fight for strong federal laws prohibiting racial discrimination. "No memorial or eulogy could more eloquently honor President Kennedy's memory," he told Congress.

In response, the House of Representatives has passed a tough new Civil Rights Act. The bill provides federal aid to help schools desegregate and creates a commission to regulate equal employment. It prohibits discrimination by employers, in unions, in public accommodations and in programs receiving public funds. It also gives the federal government broad power to enforce these rules. According to recent polls, 72% of your constituents oppose this bill.

To overcome Southern resistance, Senate moderates have suggested a compromise. If conservatives will support the rest of the bill, moderates will cut back the final provision and limit federal power to enforce desegregation. Today, in a caucus with other senators from the South, you must decide how to respond to this offer.

Case 6. You are an assistant prosecutor with the U.S. Department of Justice. The F.B.I. has brought you a case from "Freedom Summer" (June to September, 1964) when volunteers from across the country invaded Mississippi to register black voters. The campaign enrolled 1,200 new voters at a terrible price: more than 60 buildings bombed or burned, more than 80 people beaten, more than 1,000 arrests and at least six murders.

On Sunday, June 21, three civil rights workers — Michael Schwerner, 24, Andrew Goodman, 20, and James Chaney, 21 — were stopped for speeding in Neshoba County. At 10:30 that night, after paying a $20 fine, they were released. Six weeks later, the F.B.I. found their bodies: all three had been shot. The F.B.I. claims that a deputy sheriff picked up the three young men on fake charges and delayed their release so that Ku Klux Klan members could lynch them after it got dark.

Though agents have gathered solid evidence against 18 suspects, you cannot charge them with murder. The crime was not committed on federal property and, so, falls under the state's jurisdiction. The most serious charge you could file is that of conspiring to violate the victims' civil rights, which carries a maximum penalty of 10 years in prison and a $5,000 fine. Any trial, state or federal, will take place in Mississippi, where locals have hinted that the "outside agitators" got what they deserved. At today's meeting with other federal prosecutors, decide what action, if any, you should take on the case.

The Greensboro sit-in. *UPI/Bettmann Archive.*

For Discussion

1. Your teacher will explain the actual decisions made in each of these cases. How do they differ from your decisions? What goals do they reflect?
2. Why do you think so many of these incidents led to violence?

3. In which cases did the parts of our legal system — courts, law enforcement, legislators, executive — work together? Does our system work better when all its parts are in agreement? Why or why not?

4. People looking back on the 1950s often see the era as a time of great calm and conformity. What evidence supports this view? What contradicts it? Why do you think this perception is so popular?

Follow Through: Choose one of the cases and examine at least two press reports and two editorials or political cartoons published about it when it occurred. How did the public respond, locally and in other parts of the country? Does the public's opinion seem valid to you today? Create questions about your findings and discuss them with the class.

Follow Through: As early as 1915, South Africans were publicly noting the great similarities between their country and America's South. Many predicted the two regions would pursue much the same course. They didn't. Research South Africa's laws and courts and identify at least three ways in which differences between our legal system and theirs have resulted in different approaches to the problems of racial equity. Report your findings to the class.

The Pendulum Swings

Allan Bakke wanted to go to medical school. In 1973, he applied at the University of California, Davis Campus. He didn't make it. He tried again the next year; again, he failed. Questioning his rejection, Bakke found that, both years, he'd ranked close to the top of the students turned down. Further, each year, UC-Davis reserved 16 of its 100 entrance slots for minority students. Bakke had ranked higher than any of the minority students who were admitted. In other words, if not for the affirmative action program, Bakke would be in school.

Allan Bakke sued UC-Davis for violating his right to equal protection under Amendment XIV. When California's Supreme Court sided with Bakke, UC-Davis appealed to the U.S. Supreme Court.

Step 1. Some of the arguments raised during the Bakke case are listed below. Which did Bakke's lawyers use? Which support the University's case?

a. Giving the disadvantaged extra help reduces their need to compete and lessens their chances in the real world.

b. Most schools are eager to admit the children of alumni, politicians or celebrities. If those students can get special preference in admissions, why can't minorities?

c. The law cannot limit its protection to minorities. Who are the minorities?

d. Having suffered decades of poor treatment, minority students are not starting with the same advantages as whites.

e. Equal opportunity can mean different treatment.

f. Affirmative action programs reinforce the stereotype that minorities cannot succeed on their own. They increase white resentment and encourage racism.

g. All differences in treatment based on race or ethnic origin violate Amendment XIV.

h. The people who wrote Amendment XIV did not intend it to be applied to whites.

i. Affirmative action programs correct serious social problems. They increase the number of minority professionals, insure that doctors and lawyers will practice in poorer communities and undermine racism.

j. It is not fair to make innocent individuals suffer for wrongs committed long before they were born.

Step 2. Your group must prepare a three-minute oral presentation pleading one side of this case. Discuss the arguments for the side you've been assigned. Which are most convincing? Most important? Why? Can you think of any arguments that are more persuasive? Decide which arguments to include in your plea and arrange them in order. (If you use any arguments from the text, state them in your own words.) Decide who will present your plea and help him or her rehearse.

Step 3. As groups present their pleas to the class, give each a rating from 1 (well-reasoned and persuasive) to 5 (poorly reasoned and unconvincing). Be prepared to explain your opinions.

Step 4. Take a class vote on the Bakke case. Then compare your decision with the Supreme Court's, which your teacher will explain.

For Discussion

1. Do you agree with the Supreme Court's reasoning in Bakke? Do you support the majority opinion?
2. Which of the arguments you heard was most effective? Why?
3. What additional arguments might be made about the case?
4. Bakke was a victim of reverse discrimination. Some people argue that reverse and overt discrimination cannot be compared. Bakke's suffering, they say, has no relation to the grinding horror of life under Jim Crow laws. Would you agree? Why or why not?
5. Our legal system has developed a strict standard of equal protection to help groups which have historically suffered discrimination. Is it fair to apply this same standard to groups which have not similarly suffered? Why or why not?
6. Some people believe that programs to help the disadvantaged teach people to expect things on a silver platter. Opponents suggest this argument is a groundless excuse to abolish helpful and effective programs. What sources would you contact to investigate this controversy? What questions would you ask?

Follow Through: The Supreme Court considers cases involving Amendment XIV almost every term. Investigate at least three such cases in recent terms. In your report, describe the issues involved in each case and the Court's opinions. Do you think these rulings expand or restrict the 14th amendment's protections?

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